

ZONING BOARD OF APPEALS
JANUARY 27, 2009
TOWN OF BIG FLATS
COMMUNITY CENTER
'GREAT ROOM'

MEMBERS PRESENT: Joe Rowe, Chair, Tom Clark, Don Williams, Heather Hanson

MEMBERS ABSENT: Richard Seely

STAFF PRESENT: Stephen Polzella, Director of Planning, Brenda Belmonte, Secretary

GUESTS: Atty Richard Woodhouse, Steve Coldiron, James M. Harris, David W. Young, Diane Lantz, Marcia Hudock, MaryAnn Balland, Zahid Asgher, Tayyaba Asgher, Lorelee Mattison, Dick Mattison

ROLL CALL

Chair Rowe called the meeting to order noting member Richard Seely was absent.

MINUTES

December 23, 2008

Motion by Clark, seconded by Williams, to approve the minutes of December 23, 2008, Discussion, None, Motion Carries 3-0, with Rowe abstaining.

MaryAnn Balland referred to a decision in favor of the town in the Smith gravel mining suit, acknowledged the importance of the board and commended them on their hard work and dedication.

Public Hearing

Asgher Area Variance Request – Height

Chair Rowe called the public hearing to order at 7:05pm, noting it had been duly published in the Star Gazette.

SPEAKING FOR:

Atty Woodhouse, representing the Asghers, gave a brief description of the 3ft variance request. He distributed a sketch showing that only a 12ft section in the center of the roof would exceed the height limitation. The colors will blend in with the natural colors, and the landscaping and topography will reduce the visibility. Woodhouse also commented on the planning board's recommendation to approve the variance.

Dr. Zahid Asgher, 244 Kennedy Drive, Horseheads, NY, stated his intention to build a house on Valley View Dr. He reiterated that only 12 ft of the roof would be above the height limit and it will blend in.

Loralee Mattison, Land Construction, 195 Sawdey Rd, Horseheads, NY - She and her husband have been building homes for 25 years. The Asghers have put a lot of thought into their selection. Mattison presented samples of the colors to be used on the roof and front of the home, along with pictures of other homes in the neighborhood.

Polzella said the board should decide whether it would be feasible for the applicant to re-engineer the home to comply with what is required. Staff feels it is not substantial and will not create an adverse impact. Staff also feels this is self-created, however the applicant has submitted great details and evidence to support their case and the planning board has recommended approval. Polzella recommended the board finish the public hearing and make an informed decision.

SPEAKING AGAINST:
None

Public hearing closed at 7:08pm.

RESOLUTION ZBA-1-2009
Asgher – Area Variance Granted
Tax Parcel # 67.04-2-20

Resolution by: Clark
Seconded by: Williams

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for an Area Variance on December 19, 2008 and held a public hearing on January 27, 2009; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2009-15, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination with a favorable recommendation; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated January 20, 2009; and

WHEREAS, granting this area variance will provide a 3 ft. relief from Big Flats Zoning Law 17.16.020, Maximum Building Height; and

WHEREAS, on the basis of materials submitted by the applicant on and before January 27, 2009 this board finds criteria #1, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on and before January 27, 2009, this board finds criteria #2, BFZL 17.60.120-B, to fail; and

WHEREAS, on the basis of materials submitted by the applicant on and before January 27, 2009, this board finds criteria #3, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on and before January 27, 2009, this board finds criteria #4, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on and before January 27, 2009, this board finds criteria #5, BFZL 17.60.120-B, to fail; and

NOW, THEREFORE BE IT RESOLVED for the purposes of SEQRA, this Board defers to the environmental review to be completed by the Lead Agency, the Town of Big Flats Planning Board; and

FURTHER RESOLVED, to approve the Area Variance Request by Zahid and Tayyaga Asgher, 244 Kennedy Dr., Horseheads NY 14845, to provide a 3 ft. relief from Big Flats Zoning Law 17.16.020, Maximum Building Height based on the review of the criteria in the BFZL.

CARRIED: AYES:Rowe, Hanson and Clark

NAYS: Williams

ABSTAINED:

Dated: Tuesday, January 27, 2009

BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

Joe Rowe

Chairman, Zoning Board of Appeals

DISCUSSION:

Board review of criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood.
Williams, No; Clark, No; Hanson, No; Rowe, No. Passes 4-0
2. Whether the benefit sought by the applicant can be achieved by some other method.
Williams asked what would be involved in a re-design, and was told it would need to be completely re-engineered.
Williams, Yes; Hanson, Yes; Rowe, Yes; Clark, Yes; Williams, Yes. Fails 4-0
3. Whether the request is substantial.
Hanson, No; Clark, No; Williams, No, Rowe, No. Passes 4-0
4. Whether the proposed area variance would have an adverse affect on physical or environmental conditions in the neighborhood.
Clark, No; Williams, No; Hanson, No; Rowe, No. Passes 4-0.
5. Whether the difficulty was self-created.
Hanson, Yes; Clark, Yes; Williams, Yes; Rowe, Yes. Fails 4-0

Results - 3 Criteria Pass, 2 Fail.

Public Hearing
Cottages at Retirement Estates
Habitable Area Variance

Rowe opened the first Public Hearing at 7:19pm, noting it, as well as each of the following hearings had been duly published in the Star Gazette.

SPEAKING FOR:

Dave Young, of Larson Design, and engineer for the existing Retirement Estates Community stated the applicant's desire to provide a community at a lower price, which would allow senior residents to have a lifestyle they deserve. Young described the community as set aside, although still part of Retirement Estates. The proposed habitable area is for a cottage effect including a porch as well as parking.

Mark Mancini, applicant, stated that the existing community is too big for some residents who have said they would stay if there was a smaller size available. He compared the proposal to what currently exists at Bethany Village. It would be for those that could not afford to live in Retirement Estates. There would be smaller homes with smaller lots thereby having less area for the residents to maintain. Also proposed is a common ground courtyard and porches for a cottage environment. Mancini stated he could take the courtyard out of the proposal, but feels it would defeat the effect.

Polzella said staff is concerned that the request is for 835sq ft up to 1185sq ft.

Mancini stated his desire to offer the smaller homes to those who would like them.

Polzella replied that staff is uncomfortable with the lower level of 835sq ft. After much discussion the planning board recommended 4-3 in favor of this variance. Essentially each variance impacts the other. The board should consider the density they would be comfortable with.

SPEAKING AGAINST:

Steve Coldiron, 728 Sing Sing Road – Coldiron said he has lived there for 20 years and wonders when this is going to end. He asked if the proposed driveway alongside his house would be a parking area, and if so, why is it located there (so far detached)? He mentioned Mancini's comment regarding people being able to live a lifestyle they deserve. What about the people already living there? He asked the board members how they would feel about living next to an RV parking lot. Coldiron said his taxes raised \$4,000 and wonders if they will go up again next year. He would have no qualms with something being built down over the hill. Coldiron feels he is constantly encroached on where he lives. He sees no reason for the proposed driveway when there is already an existing parking lot nearby.

Polzella explained the process including the required public hearings. Those public hearings would be more suited towards Coldiron's comments. Although the input is appreciated, tonight the board is focused on the size of lots and structures.

Coldiron referenced the letter he received regarding the public hearing, saying he thought tonight was the time to offer his concerns.

Public hearing closed at 7:34pm

Public Hearing
Cottages at Retirement Estates
Lot Size Variance

Rowe opened the Public Hearing at 7:35pm.

SPEAKING FOR:

Dave Young explained that the proposed reduction of lot size is in trying to keep a cottage atmosphere with a common area / garden area for vegetation. The reduction requested is from 7000sq ft to 5128 sq feet

Polzella stated that after much discussion the planning board recommended approval 5-2. All five variance requests will likely be tabled due to having to be sent to the county for review. Perhaps the board should consider what the re-design referred to by Young would look like. There are things that can be done to reduce or eliminate this variance. If we could see that potential drawing it may help.

Young said if moving the lot line would make it more likely to be granted that could be done.

Polzella stated that the board will grant what they feel is the least substantial variance, if any at all.

SPEAKING AGAINST:

None

Public hearing closed at 7:38PM

Public Hearing
Cottages at Retirement Estates
Lot Width Variance

Rowe opened the Public Hearing at 7:39pm.

SPEAKING FOR:

Dave Young explained details of the lot width request and the space that is proposed to be between each building. He said realistically the houses would be further apart than in the existing park.

Polzella noted the planning board recommended denial 4-3. He asked Young to describe in further detail the side protrusions.

Young said that in the original development the homes could be built right up to the setback line with a porch into the side yard setback by 6 ft, which makes them 18ft apart as opposed to 30 ft

apart. Therefore, the proposed setback in the new development would be the same as the existing, and would not have any impact on the development.

SPEAKING AGAINST:

None

Public Hearing closed at 7:44pm.

Public Hearing
Cottages at Retirement Estates
Side Setback Variance

Rowe opened the public hearing at 7:45pm.

SPEAKING FOR:

Young stated this request is for a reduction from 15ft to 8 ft. He said they could agree to not have side porches which would match the existing development.

Polzella said the planning board unanimously recommended denial due to concerns that the buildings would be too close together.

SPEAKING AGAINST:

None

Public Hearing closed at 7:47pm.

Public Hearing
Cottages at Retirement Estates
Buffer Yard Variance

Rowe opened the public hearing at 7:48pm.

Dave Young stated that twice the adjoining side or rear yard is required as buffer. He said the biggest impact is on the north side where the request is for a reduction down to 57 ft. The applicant feels he needs the two additional units and wants to provide a clubhouse for the residents. Young said the clubhouse could be moved which would make the two additional units the only issue. They do not want to defeat the cottage atmosphere and destroy what they are trying to do. They have offered to install a 6ft high white vinyl fence on the side and rear of the development up to the property line.

Polzella referred to a setback required between the pavement and Mr. Coldiron's property. He is concerned that a 50ft buffer also may be needed there.

Mancini said he does not need that road.

Young said that at the time the parcel was subdivided the addition of a road was approved. The issue of the houses being close to the line was addressed and was approved with the road going to the highway. Young reiterated that the road could be eliminated.

Polzella noted that the planning board recommended denial 4-3.

Mancini mentioned that he met with the Jamison's (neighboring property owners) as well as with people from the church and they have no objections.

Polzella explained that a decision could not be made tonight. Perhaps Mancini should gather letters of support or have those in favor attend any future meetings.

SPEAKING AGAINST:

None

Public hearing closed at 7:56PM.

RESOLUTION ZBA-2-2009
Cottages – Area Variances Tabled
Tax Parcel # 48.03-2-15.262

Resolution by: Williams

Seconded by: Clark

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for an Area Variance on December 19, 2008 and held a public hearing on January 27, 2009; and

WHEREAS, the Town of Big Flats Planning Board, Resolutions P-2009-(4-8), returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination with comments; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated January 20, 2009; and

WHEREAS, granting these area variances would ultimately provide relief to density requirements; and

NOW, THEREFORE BE IT RESOLVED, to table the Area Variance requests by ReOne, LLC, 34 Retirement Dr., Horseheads NY 14845, pending further information submissions and review by the Chemung County Planning Board.

CARRIED: AYES: Rowe, Williams, Hanson and Clark

NAYS: None

ABSTAINED:

Dated: Tuesday, January 27, 2009

BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

Joe Rowe
Chairman, Zoning Board of Appeals

DISCUSSION:

Polzella spoke to the habitable area variance: He asked Young what the next best alternative would be if this board denied everything, and what variances would be required for that?

Young referred to the alternative layouts that were presented. He said that Retirement Estates was originally approved with various apartment buildings. Since then they have been replaced by single-family homes.

Polzella stated that if 1185sq ft was granted and the proposal was reduced to 10 lots no other variances would be needed.

Mancini said he was hoping the board could see his concept. It would make a nice addition as well as being an option for the elderly other than assisted living or an apartment. He does not want to put apartments there.

Rowe is also concerned with the proposal of 835sq ft to 1135sq ft.

We are dealing with an increased density. It is hard to look at a drawing and know it will give residents what they want. In looking at all the variance requests, they are pushing each unit closer together. The existing units should not drive the proposed units closer together.

Williams asked about moving the entire project further to the south.

Young replied that is where the existing retention area is.

Rowe is concerned about the impact to Mr. Coldiron's home and property line. His property would be sandwiched in between. Rowe also stated there would be an additional amount of traffic coming in and out. Cutting out the proposed main road would affect that. This is a request for approximately 30% reduction in habitable space which Rowe sees as substantial. When considering the habitable area you have to keep in mind the other variance requests affecting how close they would be to each other. Rowe's opinion is that the variance should be a minimum of 1185sq ft.

Hanson agrees the variance requests are all related. Do we approve an increased density, which we do not currently allow? Hanson likes the idea in theory, but when looking at the town and what is planned she is concerned. Even with the buffer zone, perhaps the neighborhood atmosphere would be changed.

Rowe stated that the 6ft vinyl fence mentioned by Young would be required anyway. Maybe the common area or the clubhouse could be eliminated; or perhaps fill in the hole and move things over. The density of the area is tight. In thinking about the elderly, with the roads and parking lots, it is a very dense area. Trying to cram 15 structures would make it very cramped. Rowe feels it could be done a different way. It may be more economically feasible for the builder to have that many structures but it is not necessary. There are those who build one house and make a profit – the applicant is talking about 14 houses. To say he would not make a profit with less than 14...there is a margin of profit already imbedded into the project with the existing Retirement Estates.

Polzella asked Mancini who would actually be responsible for maintaining the property? At one point it was stated that the staff would, and then a comment was made that the residents would.

Mancini said his staff would maintain the yards. The residents of Retirement Estates can choose to do their own, however, he currently maintains 75% of those homes also.

Polzella mentioned there were several phone calls made to the planning office with questions and concerns about this proposal.

In discussing abutting property owners and the buffer, Rowe said he views the request from 100ft to 50ft as substantial, which is one of the concerns when considering a variance request. The side setback request from 15ft to 8 ft, again, is almost in half. Rowe feels perhaps the applicant should go back and see how it could be done differently before submitting any more information. Maybe he could propose fewer homes in the area so it is not as dense and would not require a number of variances.

Clark also feels changing the lot width would make it more feasible.

Polzella noted that the board could require a full economic study or could ask the applicant to provide details so they could decide whether 14 buildings are needed.

Clark said if the lot was extended and the applicant removed two of the proposed houses he would be in compliance with everything but the buffer zone.

Mancini agreed saying he could work with what the board would like.

Polzella stated that the important thing is the applicant's feasibility numbers.

Mancini said he would really like to provide the smaller home –the whole idea was for smaller homes and smaller lots. 1100sq ft does not get him to the price point for the clientele he is hoping to get.

Rowe explained that the board has to look at what is before them at this time.

Mancini asked if the board could give him further guidelines.

Rowe replied that the variances requested regarding density are a concern. If the applicant wants to pursue, perhaps he should see what else could be done with the space available to him. The applicant needs to rearrange so as not to request five substantial variances. It is to the applicant's advantage to come back with a new proposal.

Mancini said if 835sq ft is not allowed it defeats the whole project and what he is trying to provide. Before going back he needs to know he at least has that.

Polzella reiterated that there would be no decision tonight, however the applicant may certainly obtain a gauge from the board's discussion.

Polzella said there are several evaluations to be addressed; apartment houses could be proposed.

Mancini pointed out that apartments are much smaller than 850sq ft.

He said he does not want to build apartments even though they are more economically feasible and would generate three times more revenue than what he is proposing.

Polzella referred to the alternate designs where no variances would be required. He asked what the apartments would look like aesthetically; would they be sided and comparable to the Town Haven Apartments?

Mancini answered yes, but as a neighbor he would have more concerns with apartments than with homes. He said he needs a good feel that the 835sq ft is acceptable – that is more the issue for him than the others.

Polzella stated technically the county planning board does not favor a decision being made before their review, however, a vote could be taken on one or all proposals with a conditional for county approval. For example, the board could take a vote on the habitable area tonight which is what the applicant has said is the most important issue.

Rowe replied yes, but we are looking at what is before us.

Polzella explained the board could motion to limit the size.

Clark feels he would be more comfortable with seeing the layout.

Rowe said again, the entire board is not comfortable with what is before them. He stressed that the applicant should come back with other options.

Polzella reminded the applicant that any changes would need to be submitted by February 5, 2009.

RESOLUTION ZBA-3-2009
ZBA Alterate Recommendation

Resolution by: Clark
Seconded by: Williams

WHEREAS, the Town of Big Flats Zoning Board of Appeals has reviewed a letter of interest, resume and application to be a Zoning Board Member from Diane Lantz; and

WHEREAS, this Board interviewed the candidate at their regular meeting January 27, 2009; and

NOW, THEREFORE BE IT RESOLVED, for the purposes of SEQRA, this is a Type 2 action not subject to environmental review; and

FURTHER RESOLVED, to recommend the Town of Big Flats Town Board appoint Diane Lantz as ZBA alternate as per 17.60.070(D) of the BFZL.

CARRIED: AYES:Rowe, Williams, Hanson and Clark
NAYS: None
ABSTAINED:

Dated: Tuesday, January 27, 2009
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

RESOLUTION ZBA-4-2009
Vice-Chairman Designation

Resolution by: Clark
Seconded by: Rowe

WHEREAS, the Town of Big Flats Zoning Board of Appeals rules of procedure states a Vice-Chairman shall be designated by the Board; and

NOW, THEREFORE BE IT RESOLVED, for the purposes of SEQRA, this is a Type 2 action not subject to environmental review; and

FURTHER RESOLVED, to designate Don Williams as the Town of Big Flats Zoning Board of Appeals Vice-Chairman.

CARRIED: AYES:Rowe, Williams, Hanson and Clark
NAYS: None
ABSTAINED:

Dated: Tuesday, January 27, 2009
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

Motion by Williams, seconded by Clark to adjourn at 8:56pm, Discussion, None, Motion Carries 4-0.

Meeting adjourned at 8:57pm.

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
FEBRUARY 24, 2009

ZONING BOARD OF APPEALS
FEBRUARY 24, 2009
TOWN OF BIG FLATS
COMMUNITY CENTER
'GREAT ROOM'

Members Present: Joe Rowe, Chair, Tom Clark, Don Williams, Heather Hanson, Diane Lantz

Members Absent: Dick Seely

Staff Present: Stephen Polzella, Director of Planning, Brenda Belmonte, Secretary

Guests: Norman Theetge, Scott Esty, Jacob Esty, James Gensel, David Lubin, Jim Kucko, Julie Kucko

ROLL CALL

Chair Rowe called the meeting to order at 7:00pm noting Dick Seely was absent and alternate Diane Lantz was filling in.

MINUTES

January 27, 2009

Motion by Williams seconded by Hanson to approve the minutes of January 24, 2008, Discussion, None, Motion Carries 5-0.

PUBLIC HEARINGS

Theetge Area Variance / Front Setback

Chair Rowe called the public hearing to order at 7:01pm, noting it had been duly published in the Star Gazette.

Speaking For:

Norm Theetge, Applicant, 1251 W. Church St., Elmira, NY, stated he purchased the property with the intent to build a home. Theetge hired a real estate attorney to assure there would be no complications. After buying the property Theetge was informed the lot did not have sufficient road frontage and therefore was not buildable without a variance.

Staff recommends the ZBA grant the variance; it is a single-family residence in an R1 district.

Speaking Against:
None

Public Hearing closed at 7:04pm

RESOLUTION ZBA-5-2009
Theetge – Area Variance Granted
Tax Parcel # 66.01-2-15

Resolution by: Clark
Seconded by: Williams

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for an Area Variance on December 31, 2008 and held a public hearing on February 24, 2009; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2009-22, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination with a favorable recommendation; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated February 17, 2009; and

WHEREAS, granting this area variance will provide 230 ft. relief from BFZL 17.16.020, Minimum Front Setback; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #1, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #2, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #3, BFZL 17.60.120-B, to fail; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #4, BFZL 17.60.120-B, to pass; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #5, BFZL 17.60.120-B, to fail; and

NOW, THEREFORE BE IT RESOLVED, for the purposes of SEQRA, this is a Type 2 action; and

FURTHER RESOLVED, to approve the Area Variance Request by Norm Thetgee, 15 Sticklertown Rd., Corning, NY 14830, to provide 230 ft. relief from BFZL 17.16.020, Minimum Front Setback due to the property being located in the R1 District and the proposed use being a single-family dwelling.

CARRIED: AYES: Rowe, Hanson, Williams, Lantz and Clark

NAYS:

ABSTAINED:

Dated: Tuesday, February 24, 2009

BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

Joe Rowe

Chairman, Zoning Board of Appeals

Discussion:

Williams asked how wide the frontage is and was told approximately 50 ft, which is enough for a driveway.

Criteria Review:

1. Whether an undesirable change will be produced in the character of the neighborhood. Passes 5-0
2. Whether the benefit sought can be achieved by some other method. Passes 5-0
3. Whether the requested variance is substantial. Fails 5-0
4. Whether the proposed variance will have an adverse affect of impact on the physical or environmental conditions of the neighborhood. Passes 5-0
5. Whether the alleged difficulty was self-created. Fails 5-0

Criteria Passes 3-2

Kucko – Public Hearing

Front Setback & Minimum Lot Area

Chair Rowe opened the Public Hearing at 7:08pm noting it was duly published in the Star Gazette.

Speaking For:

Julie Kucko, applicant, referring to letters submitted with the application, stated that she and her husband Jim have been in front of several people in the Planning Department in

regard to this property. Kucko said she had spoken with town staff, including Carl Carson and the Town Supervisor, prior to their purchase and according to Ms. Kucko, made them well aware of her intentions to make it financially feasible. At that time they were allegedly told their ideas were in line with what was foreseen, and no problems were foreseen. Kucko said since that time, they have been to the town at least two times a year and were told they needed a use that the area was already zoned for. Their intent has always been to use the entire facility for other uses. Polzella has since informed them there were other issues and that was the first time they heard of those obstacles. Due to the investment, it would not be financially feasible to proceed without the requested variances.

Polzella reviewed the staff report, including criteria, regarding Front Setback:

Staff feels the front setback variance request should be denied as submitted. However, they are recommending a conditional variance limited to the existing footprint, rendering the building conforming.

1. As to whether an undesirable change would be produced in the character of the neighborhood.

The main concern is that the variance stays with the land, not with the owner or the use. Therefore any future owner would be permitted to demolish the building and build right up to the front setback.

2. As to whether the benefit sought can be achieved by some other method.

The potential does exist to demolish some of the building. The board needs to decide whether that would be feasible. There are several court cases on file saying it would not be feasible.

3. As to whether the requested variance is substantial.

This is a substantial request from 25 feet setback to 0 setback.

4. As to whether the variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood.

There are several unknowns as to whether the variance would have an adverse impact so that is a tough question to answer. Conditioning the variance would reduce those potential impacts.

5. As to whether the alleged difficulty is self-created.

Staff feels yes, the difficulty is self-created.

Polzella then reviewed the request regarding Minimum Lot Area.

The applicant is required one acre per principal use, and this board upheld that decision regarding interpretation when this case was presented previously. Kucko is requesting two uses as opposed to the allowed one per acre. Currently they have 1.88 acres and would need relief from 1 acre to .59 acres.

Criteria Review:

1. Whether an undesirable change would be produced in the neighborhood.
Staff has concerns that any owner could initiate any of the uses allowed. Each use would have its own set of impacts. Staff is not comfortable with making any recommendation.
2. Whether the benefit sought could be achieved another way.
The applicant could purchase additional land from bordering landowners.
3. Whether it is substantial.
Staff feels it is substantial, as it would provide relief of 40 percent.
4. Whether it would have an adverse affect on the neighborhood.
This is hard to answer without knowing the specific use.
5. Whether it is self-created.
Yes, the applicant purchased the land knowing of the issue.

Again, staff feels a broad variance should be denied, but recommend a conditional variance to allow the pre-existing food service use and antique use, which is permitted with site plan approval. Any other use would need to be re-evaluated at the time of such a request.

Speaking against:

None

Public Hearing closed at 7:17 pm

RESOLUTION ZBA-6-2009

Kucko – Area Variance (Front Setback)

Tax Parcel # 66.02-2-31.32

Resolution by: Clark

Seconded by: Hanson

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Jim and Julie Kucko, owner of tax parcel #66.02-2-31.32, for relief from Section 17.16.020 of the Town of Big Flats Zoning Law, Minimum Yard Requirements (Front); and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2009-20, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination with a favorable recommendation pending reasonable conditions; and

WHEREAS, a public hearing was held on February 24, 2009; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated February 17, 2009; and

WHEREAS, granting this area variance would provide a 25 ft. relief from Big Flats Zoning Law 17.16.020, Minimum Yard Requirements (Front); and

WHEREAS, the proposed action is an Unlisted action pursuant to SEQR 6 NYCRR Part 617 and the Zoning Board of Appeals of the Town of Big Flats has conducted an uncoordinated review as lead agency; and

WHEREAS, the Planning Board has considered the Short Environmental Assessment Form and other materials submitted by the applicant in support of the proposed action, has considered the comments of its staff reports through February 17, 2009, made via written memoranda to the Zoning Board (which memoranda are incorporated herein by reference) and verbal commentary during the Zoning Board's meetings pertaining to the review and evaluation of the proposed action; and

WHEREAS, this board has expressed concern with the idea of eliminating the entire "front" Yard Requirements due to potential impacts regarding public safety; and

WHEREAS, this boards considerations and review are solely based on the notion that relief would be conditioned to the existing footprint of the building (58 feet) and therefore, the existing 20 ft., North of the existing building, and the 105 ft., South of the existing building, shall comply with the Town of Big Flats Zoning Law; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009 this board finds criteria #1, BFZL 17.60.120-B, to fail because the potential impacts of the permitted uses in the district outweigh the benefit to the applicant; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #2, BFZL 17.60.120-B, to pass because the options discussed are not feasible for the applicant; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #3, BFZL 17.60.120-B, to fail because the request is to eliminate the front setback entirely; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #4, BFZL 17.60.120-B, to fail because the potential impacts of the permitted uses in the district outweigh the benefit to the applicant; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #5, BFZL 17.60.120-B, to fail because the applicant knowingly purchased the property with some Zoning deficiencies; and

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Big Flats hereby determines, pursuant to the provisions of SEQR 6 NYCRR Part

617, that the proposed Unlisted action will not have a significant impact on the environment and that preparation of an Environmental Impact Statement will not be required, thereby issuing a Negative Declaration; and

FURTHER RESOLVED, to grant conditional approval of the Area Variance Request by Jim and Julie Kucko, 124 Que Vista Dr. W., Horseheads NY 14845, providing 25 ft. relief from Big Flats Zoning Law 17.16.020, Minimum Yard Requirements (Front), based on the review of the criteria in the BFZL, to the area of the lot (58 feet) where the structure currently exists.

Request Denied: **AYES:** Lantz and Clark
 NAYS: Williams, Rowe and Hanson
 ABSTAINED:

Dated: Tuesday, February 24, 2009
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

Discussion:

Williams has a problem with making a decision on front setback based on the information we have. He feels we should allow more planning by the applicant before we make a decision, such as marketing, traffic, etc. There is a lot to contend with. For example that is a 40mph zone.

Polzella stated staff has investigated the impacts of the proposed antique use, and felt that could be granted based on it being a low impact use. The planning board would have to review the site plan and further study the parking, traffic impacts, and stormwater.

Williams asked if a granted variance would be passed on to the next owner.

Polzella answered yes, but only the antique use. The applicant could operate the existing use and the other part of the building would be conditional. Any other requested use would need to be reapplied for and reevaluated by the ZBA.

Note: Mr. David Lubin arrived at 7:20pm

Polzella asked the applicant if they understand that this would limit them to just the antique use.

Kucko asked if she understood correctly that conditions are being put on it. She thought that anything already zoned for would need a site plan anyway. Is it typically normal to put conditions on a variance like this?

Polzella answered yes, NYS permits this board to grant the variance with the least impact. If this board agreed with staff recommendation it could be an antique co-op. This board is not comfortable with granting a broad variance, which would allow any of the 36 uses. Staff has evaluated this as an art co-op. Any other use would need to go through the same application process.

Kucko again asked if any other uses would need to go through the entire site plan application anyway.

Polzella replied yes, however you need to get past this hurdle first.

Rowe does not see enough data that makes him comfortable with the conditions. There is no data even as an antique business or regarding the traffic impact. This board has always made sure that the applicant understands the impact of going through these processes. By order of the Town of Big Flats ZBA Rules of Procedure, if this is denied, and the applicant came back with a new plan, they would need to pay the fee and begin the application process all over again. What is the true cost of the additional things they would need to do with the building and the lot? That is going to cause a financial impact and there is not enough data presented.

Polzella explained that the lot area and the second use are two separate issues. The applicant cannot make upgrades without the first variance. Do we have enough data to go through that conditional approval?

Clark asked what current setback is.

Polzella replied approximately eight inches, and stated that obviously the building was there long before the road. He stated staff has a concern with granting the variance because it would stay with the land. In the future, the building could be demolished and rebuilt right up to the road.

Clark feels that granting the variance could allow the applicant to do façade work.

Polzella said that the applicant is currently limited to being able to do improvements that are needed or as much as they could financially afford. It would be a conforming structure, a non-conforming use.

Rowe asked if it is a nonconforming building because it violates the front setback.

Polzella answered yes, and explained the details regarding the footprint and the setback. The ZBA would be approving the little piece that sticks out to conforming.

Polzella stated that the board is at an interpretation impasse.

Rowe asked if precedent would be set by saying you could have a conforming building by moving your setback line, to which Polzella replied yes.

Rowe said he could understand if it was perhaps 10ft, but zero? Are you are going to approve that?

Polzella explained that as far as precedent, defining this as a unique situation as noted in the staff report is sufficient.

Rowe stated that there are a lot of unique situations that come before this board. This is no more unique than anyone else who comes before this board. We have always spoken about what substantial is. Rowe feels zero is substantial.

Polzella said if it was granted to move the whole setback to 0, would that be nonconforming?

Rowe stated he would not even consider that, because the entire building could be built next to the road.

Williams asked, if someone else purchased the property, could the new party run the Dairy Barn?

Polzella replied yes, but anything else or to build anything else they would need a variance.

Further discussion was held, and Polzella said the differences are on the interpretation.

Rowe is concerned about the precedence. If this were conditionally granted, it would be made a conforming structure. At that point, could they do anything other than ice cream?

Polzella said anyone could do anything that is allowed in the zoning district.

Rowe said that would mean anything with high traffic. For example, he could buy the building, put in a pharmacy, and leave the existing front door, because the approval would grant the ice cream business as well as other business.

Kucko asked if it could be a condition that as long as the original building is used; that if you were tearing down and restructuring it would meet the minimum setback.

Polzella stated research has shown that they have to be reasonable conditions – reasonable has different interpretations – we have to look at the forever aspect. Basing it upon the building is not reasonable. That is why staff suggested it be conditional on the footprint. A future owner should not be held to the current owner's unreasonable condition.

Lantz feels that without the variance the applicant is limited to making improvements. Is that reasonable of us?

Rowe stated that is not our call.

Polzella said the ZBA has to make their decision based on how the request would affect general health safety and welfare. The applicant's financial livelihood is not one of the criteria.

Hanson feels we don't often see that it is not self-created. That stood out to her.

Polzella replied yes, it is two-fold. It is self-created because they purchased the property knowingly, but they are placed with the situation that the road was built right there.

Rowe feels if the variance was granted, and not knowing what could be there in the future, the traffic impact could be very different. In looking at safety, we would have increased the public risk by making it more harmful. In looking at a secondary use, and having no data as to the traffic, Rowe does not feel that there is enough information presented.

Polzella said one of the options could be to table pending a traffic impact study by someone chosen by the town or the applicant. The issue is for the second variance; the study would have to be done on that use. We could reasonably say the front setback would be conditional on the existing footprint and the pre-existing food service use. If the Dairy Barn were to shut down they would have to come back. The code officer or an engineer has to deem the property damaged to allow the applicant to spend the amount needed for a modification / alteration.

Rowe feels the variance should not be based on that. If approved, the variance would go with the land.

Williams agrees, saying it also concerns him that the variance goes with the land, which could potentially allow for several uses.

Rowe said the variance is not for renovation of the building. He understands the idea is to make the ice cream parlor look nicer, but they want an opportunity to do other activities on that property as well. In order to do that this variance needs to be approved.

Williams asked if the condition would apply to those two businesses only.

Polzella said it would be a stretch to attach it to this one. It would need to be tabled and researched.

Williams feels it should be tabled, as there is not enough information presented.

Polzella explained that, based on the information from this discussion, he would recommend denying both of the requests tonight. If tabled we owe the applicant an itemized list of everything needed to submit, and that could be a significant amount of information. Similar to a case we will hear later, this board is nearing the limit of the ZBA and getting into more of a legislative thought process.

Rowe mentioned reviewing the criteria, however it seems there are some questions and concerns about making this a conforming lot. There are no controls on the property. It could be sold to anyone, and that use could be a much higher volume with a much different impact.

Polzella pointed out that the board could request that the applicant submit a full report on what, why, and how they want to do what they are seeking. However, that would be based on only one person's wishes, and if sold, would not be reasonable for a new owner.

Criteria – Front Setback – Based upon the motion of granting the conditional variance as described above.

1. Whether an undesirable change will be produced in the character of the neighborhood.

Rowe is concerned that the variance stays with the land. The next owner would have the same variance allowing a 0 setback for the front area, which could continue to be used as the front door to that business.

Polzella agreed, saying it would create a structure to be modified as much as was affordable.

Rowe stated they could demolish and reconstruct with a 0 setback in that area.

Polzella said yes, a shopping plaza could be built, and the tractor-trailer and public safety issue would remain. The idea of non-conforming is that they will be eliminated some day. The barn will not be there forever, and once it is gone a new building would go with the original setback. Granting the variance would not eliminate a non-conforming situation, it would allow it to continue forever legally.

Rowe stated that the risk factor could be elevated depending on the volume of business. When driving by there at this time, Rowe slows down because of people coming in and out as well as people crossing the street. He is concerned that we would approve that situation, and it could stay there as long as the building is standing.

Williams, fails; Rowe, fails; Hanson, fails; Clark, passes; Lantz, passes. Fails 3-2

2. Whether the benefit sought can be achieved by some other feasible method.

Polzella said the only option would be to knock down that portion of the building, but as stated earlier, to say you are denying because it could be torn down has recently been thrown out by the courts.

Rowe asked who owned the abutting property? Could the front be located somewhere else?

Polzella replied yes, if someone were to buy the corner lot and knock everything down.

Kucko stated that Applied owns to the right, and Larry Wagner owns the small barn to the left, however, that is only one-half an acre.

Rowe feels it would be different depending on where the front door is, and would make a big impact if it were not at a zero buffer. Again, we have no data. It is one thing if there wasn't any land on either side as an option to use, but knowing that there is, there are feasible ways of having a front door without a zero setback. Rowe would be more comfortable with that.

Clark asked if the proposed antique business would have a separate entrance.

Kucko answered yes, and commented that the land to the right is not for sale nor is it vacant. To a big business maybe that would be feasible, but for her situation it is not feasible at this time.

Rowe reiterated that he sees no data telling him it is or it is not. It may be costly, it may be not. Williams, passes; Rowe, fails; Hanson, passes; Clark, passes; Lantz, passes. Passes 4-1

3. Whether the request is substantial?

Williams, fails; Rowe, fails; Hanson, fails; Clark, fails; Lantz, fails. Fails 5-0

4. Whether it will have an adverse affect or impact on physical or environmental conditions on the neighborhood.

Williams, fails; Rowe, fails; Hanson, fails; Clark, passes; Lantz, passes. Fails 3-2

5. Whether the alleged difficulty is self-created?

Williams, fails; Rowe, fails; Hanson, fails; Clark, fails; Lantz, fails. Fails 5-0

Balance Test Fails 4-1

Rowe – the motion on the table was to deny but grant a conditional variance on the existing area of the footprint.

Rowe said again, keep in mind, the variance stays with the land, not the owner. Even with conditional approval, it is relieving that property and making it a conforming structure.

Polzella explained that the applicant could reapply with a different set of submissions.

Kucko stated that would entail a new application with an additional fee.

Polzella asked the applicant if the board should consider the Lot Area Variance withdrawn?

Kucko replied yes, withdraw – if they knew this was going to happen they would not have wasted anyone's time. She recalls being asked to go through this process, and that Polzella was going to recommend approving. Kucko said this has been four or five years of nothing but grief. She also stated that she will not be encouraging people to purchase property in Big Flats as a local realtor.

Polzella stated for the record that he did recommend conditional approval.

It is noted that the applicant has officially withdrawn the application for minimum lot area relief.

Public hearing – Hampton Inn Sign Variance Quantity and Height.

Chair Rowe opened the Public hearing at 8:11pm noting it had been duly published in the Star Gazette.

Quantity Request

Speaking in favor:

Jamie Gensel, Fagan Engineers, representing the applicant, began by commenting on the present Raymour & Flanigan building. Gensel stated he has compared the town's 1997 sign law to the 2002 sign law, and he believes they are identical regarding BR (Business Regional) signage. In the current BR zone, 99 percent of the buildings having dual frontage have multiple façade signs. Gensel's opinion is that the interpretation has changed. The previous zoning officers interpreted the law one way, and now it is being interpreted differently. A façade sign needs to be on the side of the building that faces the road. This building will have multiple sides facing the road. Raymour & Flanigan has a sign on three sides. This board reviewed a variance per each sign facing the parking, and said a sign was allowed facing the road. That 2004 case ruling has set a precedent as a board by allowing a façade sign on the side of the principal building that faces the road. Gensel reviewed the criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood.

No, most of those businesses have multiple façade signs.

2. Whether the benefit sought can be achieved by some other feasible method.

No, any additional signage sufficient for identification would require more variances. This use is a destination, bringing users from out of the area. People from this area know how to get to Raymour & Flanigan and they were allowed their signs. Signage is needed to identify this site. Many customers come from Watkins Glen or the airport – we need signs in those areas, and are trying to do the minimal for identification.

3. Whether the request is substantial.

No, we are seeking only one façade sign per side, and it is not the largest allowed (500sq foot as opposed to 750sq ft). The 750sq ft law was written with the intent to have façade signs.

4. Whether it will have an adverse affect or impact on physical or environmental conditions on the neighborhood.

No, as stated before it is similar to other uses in the area.

5. Whether the alleged difficulty is self-created.

No, the parcel is surrounded by three sides and the roadway is located such that it needs signage on all sides.

Polzella noted the interpretation would be discussed after the hearing.

Height Request

Gensel went on to speak in favor of the sign height variance request:

When the applicant applied for a variance as to the height of the building, the requested increase was for the number of rooms. Each floor has windows for each room, which prevent signs at lower elevations. Signs cannot be placed over windows.

Gensel reviewed the criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood.

No, the submitted photos show that most signs are located at the highest point of the buildings. With the 36-ft tall requirement the original intent was that the freestanding signs would be towering over. In this case, we are trying to get the façade signs at the highest point to identify the building. Façade signage is usually at the top.

2. Whether the benefit sought can be achieved by some other feasible method.

No, lowering the signs would obstruct the windows.

3. Whether the request is substantial.

No, it would be in relationship to the height of the building and comparable to the other buildings in the area.

4. Whether it will have an adverse affect or impact on physical or environmental conditions on the neighborhood.

No

5. Whether the alleged difficulty is self-created?

Yes, because they are requesting those signs.

In closing, Gensel stated they are trying to match the character of the area and they feel it is consistent with the Big Flats Zoning Law.

Polzella asked the applicant, if the board were to allow two signs, which ones would they be?

Lubin replied he is proposing four signs – he feels that is what is necessary.

Speaking Against:

None

Comments:

Polzella noted that the staff report recommended different options which staff feels would provide adequate signage based upon the already existing DOT Tourist Oriented Destination Signs. The planning board recommended that the ZBA consider the best staff recommended option.

Public hearing closed at 8:25pm

RESOLUTION ZBA-7-2009
Hampton Inn – Sign Variance
Tax Parcel # 58.03-1-1.5

Resolution by: Lantz

Seconded by: Clark

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for a Sign Variance on January 16, 2009 and held a public hearing on February 24, 2009; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2009-23, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination and to consider the options in the Staff Report to the ZBA to be dated February 17, 2009 and decide the most appropriate option; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated February 17, 2009; and

WHEREAS, granting this sign variance would provide relief from BFZL 17.52, Signs; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009 this board finds criteria #1, BFZL 17.60.120-B, to pass because the proposed action is in direct relation to the neighborhood; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #2, BFZL 17.60.120-B, to fail because several options presented in the Staff Report dated February 17, 2009 are adequate; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #3, BFZL 17.60.120-B, to fail because the request is to install three additional signs (beyond the BFZL allowance) and to install all four façade signs with 42% relief from BFZL sign height regulations; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #4, BFZL 17.60.120-B, to pass because the proposed action is in direct relation to the neighborhood; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #5, BFZL 17.60.120-B, to fail because the applicant knowingly purchased the property and constructed a Hampton Inn; and

WHEREAS, the proposed action is an Unlisted action pursuant to SEQR 6 NYCRR Part 617 and the Zoning Board of Appeals of the Town of Big Flats has conducted an uncoordinated review as lead agency; and

WHEREAS, the Planning Board has considered the Short Environmental Assessment Form and other materials submitted by the applicant in support of the proposed action, has considered the comments of its staff reports through February 17, 2009, made via written memoranda to the Zoning Board (which memoranda are incorporated herein by reference) and verbal commentary during the Zoning Board's meetings pertaining to the review and evaluation of the proposed action; and

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Big Flats hereby determines, pursuant to the provisions of SEQR 6 NYCRR Part 617, that the proposed Unlisted action will not have a significant impact on the environment and that preparation of an Environmental Impact Statement will not be required, thereby issuing a Negative Declaration; and

FURTHER RESOLVED, to grant relief from sign height regulations and the number of façade signs permitted to allow façade signs on the northeast, southeast and southwest faces of the structure to be constructed on Tax Parcel # 58.03-1-1.5.

Request Denied: **AYES:** Clark and Lantz
 NAYS: Williams, Rowe and Hanson

Dated: Tuesday, February 24, 2009
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

Discussion:

Rowe asked if this variance was denied, and the applicant wanted an option of two signs instead, would he need to re-apply?

Polzella replied that the applicant would need to resubmit – unlike some boards, the ZBA has default denial of appeal. Polzella referred to the applicant's comment regarding prior interpretation, saying as current zoning officer his interpretation is different than prior officers. As zoning officer, he would like to poll the board as to their interpretation of Section 17.52.050 regarding façade signs. Citing the code, Polzella stated that the maximum allowable sign area per face in square feet is the lesser of 10 percent of the area of the side of the building the sign is installed on or 350sq foot of the sign. The issue Polzella sees as being misinterpreted is the location permitted on the side facing the road. Code states that one sign is allowed for each permissible use, and one for each accessory

use. Polzella is standing by the current interpretation; a building surrounded by roads is allowed one façade sign for that use. It would be the applicant's option to choose which side to have that one sign on.

Rowe said, for example, a building with four sides to it with one side being a Raymour and Flanigan, another side a bank, and another side a drug store, the applicant would be allowed one sign for each principle use. However, if he just had a bank, then one sign would be allowed for the one principle use.

Polzella gave an example of the Hilton, which has a restaurant inside. It would be allowed one façade sign on a side, and a restaurant accessory use sign on whichever side the applicant feels is appropriate that faces the road.

Clark asked if they would still be allowed only one sign if there were four entrances.

Polzella answered yes, the code says one sign per use.

Rowe reiterated that the code allows one sign for each principal use, and in this case the principal use is the hotel. Based upon what is written, Polzella is asking for the board's interpretation. Rowe stated that he agrees with Polzella's interpretation; one sign not four.

The board voted as to whether they were in agreement with Polzella's interpretation: Hanson, agree; Williams, agree; Clark, agree; Lantz, agree; Rowe, agree

Rowe confirmed the results of the poll: Based upon the vote, the board agrees that the zoning officer's interpretation is correct.

Polzella noted the interpretation had been qualified. The applicant has come in with seven variance requests. Three of those requests are due to interpretation, and the remaining four are to permit signage above the allowed height. As per the staff report, several options have been suggested. Polzella reminded the board that, while reviewing the criteria, the balancing of public health, safety and welfare needs to be considered. Polzella admitted that the staff report is somewhat critical, however several options are suggested. Keep in mind that this type of request does not have a precedent. The previously mentioned Raymour & Flanigan case dealt with a sign not facing a road. The planning board decided any of the other cases. Polzella said the applicant could utilize the Tourist Oriented Destination Signs, which are noted on a map presented by staff. The purpose of signs is to locate the hotel and bring customers in. Based on hotels across the state, and areas where signage laws are even stricter than ours, DOT has come up with these tourist destination signs to get people where they want to go. Polzella gave specific details of each sign directing travelers to the façade, as well as details of each freestanding sign. He then reviewed the suggested options:

1. Deny all requests and warrant the applicant to place one façade sign on the building of their choice, (most likely over the front door), under the maximum allowable square footage.

2. Deny all variances, but permit a second freestanding sign, potentially at the lowest corner of the property

3. Deny six of the seven requests –granting relief for only one height exception, allowing the proposed sign at the elevation shown on the front of the building, or the side of the applicant’s choice.

4. Deny six of the seven requests – allowing a sign high on the front, and permitting the second freestanding sign.

Polzella noted that the Hilton Garden Inn would block any sign on the rear of the building. It would be safer to look at a road sign than to look up at a 50-ft high façade sign. He then reviewed the sign request, noting one of the proposed signs would not be visible from anywhere relevant.

Rowe would like to review the above options before a motion is made and decide which option to suggest.

Clark feels the applicant has made a big investment in the community, 8 million dollars according to the newspaper, and his opinion is that one of the best advertisements for the building is a sign. He disagrees to having a sign on the back of the building, but would agree to allow the other six that are requested.

Polzella questioned the benefit of a sign on the northeast point.

Clark said it would be seen from Hickory Grove Road.

Polzella recommended the board create some record as to why that motion is not arbitrary and capricious.

Clark stated it would be putting a façade sign on each roadside.

Rowe commented that some of the proposed signs would not be visible.

Polzella explained that staff’s concern is with the signs being 50 plus feet up and being in normal driving vision zones.

Clark commented that they would be seen from a distance.

Rowe disagrees with Gensel’s comment that people know where Raymour & Flanigan is located. Many people come here that do not know where it is. This hotel already could have signage at each exit and road with the use of 12ft freestanding signs. When driving down the freeway one looks for a freeway sign showing what is ahead.

Gensel stated that only four signs are allowed on a highway sign, and there are four there already.

Polzella stated we have no documentation from DOT verifying that point.

Rowe, referred to the argument of someone trying to find hotel. While on the freeway a driver would be looking at the roadside signs, not at the height of signs over 36-feet. If you haven't made it to that building before you've seen those signs, you probably shouldn't be driving, because you will see the building. There are directional signs bringing you in there. This board has already approved the height of the building with a variance. Rowe sees no problem in approving the sign in front at that height. He does not agree to approving the remaining signs. Code states one sign for each principal use. If we agree on the interpretation of the code, approval would allow for two additional signs. We would be agreeing to add something that is not yet proven to be necessary.

Polzella feels this exact motion is the old interpretation, which was thrown out tonight.

Lubin stated that every building has four signs. For example, Sears has four and they did not need any variances.

Clark feels we have to look at the amount of money invested, and this is probably the cheapest advertisement they have.

Rowe feels the monetary value should not drive the board to approve the sign request. It is not based on the money; it is based on the code. It does not say if a certain amount is spent we should approve any request.

Clark said the Town of Big Flats wants this business.

Rowe does not agree with Clark's statement saying that just because the town wants this business we should approve any variance. There are multitudes of other ways hotels advertise. Due to this being a Hampton, it will have the benefit of being advertised any way you could think of. Most people would be using a GPS to tell them where to turn. Also, most people have already made reservations and know where they are going.

Polzella referred again to an Article 78 proceeding; how is this motion, which goes against the staff report and findings of the discussion not arbitrary?

Scott Esty, commenting as a traveler, stated he has stayed more than 75 nights at a Marriott, and has traveled numerous times. When arriving at an airport in a strange place he looks for the trademark sign of that hotel. That is how they brand their properties. As a traveler you are tired and may have to get up early so you don't want to spend a lot of time searching. Esty stated, as a marketer, he has made extensive studies on the branding aspects of those properties. He is aware that the application fee for each variance is \$500, however each of the proposed signs would cost several thousand dollars. Esty does not

feel the applicant would want to invest in more signs if they were not necessary. That would be a waste of money.

Rowe said he also travels a lot, and the shape of the building tells him the name of the building. It could be seen at night because it would be lit up. This board is supposed to look at the code to interpret the number of signs allowed. The code should decide if it is substantial and if it sets a precedent. The board should not look at the cost of the building, or whether the sign would be expensive. Big Flats is not New York City, or any other metropolis area – if you get lost at the mall in Big Flats, Rowe feels that is a personal problem. We want the community feel, and not the feel of a large city.

Hanson stated that due to the entire board agreeing on the interpretation, they should grant the minimum allowable variance from that point. She agrees with staff that the minimal recommendation should be allowed. The concern is that someone would question the decision – we have to decide as close to the law as possible.

Williams would agree to grant the front sign request including height. Arnot Drive and Colonial Drive will advertise it, and that would make it reasonable to find. Also, with the location of another freestanding sign from the other direction it should be adequate.

Clark stands with his opinion.

Lantz upholds her motion.

Polzella stated the need to review the five criteria based on the motion. Polzella clarified that, should this go to a vote and fail, the motion would cost the applicant \$500 per request to reapply.

Rowe commented that he would have agreed to the height in the front with the addition of the two freestanding signs. This would give the applicant two critical points where people are coming in, along with a façade sign in the front. With the DOT signage, anyone can adequately find that building.

Rowe stated he would amend the motion, but that decision is up to Lantz.

Lubin feels Polzella is changing the rules and the law.

Polzella responded by saying there are five people on the board that agreed with him on the interpretation. He also stated that Lubin should respect the board and ask for permission to speak.

Lubin feels Polzella influenced them, and the interpretation is not correct and stated he could prove it.

Rowe said as far as influence, Lubin was present for the prior public hearing (Kucko). We often don't follow staff comments – we decide as a board.

Rowe said to Lantz it is her decision whether to go forward or withdraw her motion.

Lantz again upholds her motion.

Clark stated that the applicant is not asking for any more signs than the hotel down the street and the motion is for less than what is requested.

Rowe said the past should not influence any decisions on how we move forward. The planning board should not have made that decision.

Polzella clarified the motion; the applicant is asking for all four signs.

Criteria Review:

1. Whether an undesirable change will be produced in the character of the neighborhood.
Clark, passes; Lantz, passes; Williams, passes; Hanson, passes; Rowe, passes
2. Whether the benefit sought can be achieved by some other feasible method.
Williams, fails; Rowe, fails; Clark, fails; Lantz, fails; Hanson, fails
3. Whether the requested variance is substantial.
Rowe, fails; Williams, fails; Clark, passes; Lantz, passes; Hanson, fails
4. Whether the proposed variance will have an adverse impact on the neighborhood.
Williams, passes; Rowe, passes; Clark, passes; Lantz, passes; Hanson, passes
5. Whether the alleged difficulty was self-created.
Hanson, fails; Lantz, fails; Clark, fails; Williams, fails; Rowe, fails

Balance Test Fails 3-2

OLD BUSINESS

Cottages Variance

RESOLUTION ZBA-8-2009

Cottages at Retirement Estates – Area Variances

Tax Parcel # 48.03-2-15.262

Resolution by: Williams

Seconded by: Clark

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from RE One, LLC, owner of tax parcel #48.03-2-15.262, for relief (five requests) from the Town of Big Flats Zoning Law; and

WHEREAS, the Town of Big Flats Planning Board, Resolutions P-2009-(4-8), returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination with comments; and

WHEREAS, a public hearing was held on January 27, 2009; and

WHEREAS, the proposed action is an Unlisted action pursuant to SEQR 6 NYCRR Part 617 and the Zoning Board of Appeals of the Town of Big Flats has conducted an uncoordinated review as lead agency; and

WHEREAS, the Planning Board has considered the Short Environmental Assessment Form and other materials submitted by the applicant in support of the proposed action, has considered the comments of its staff reports through February 17, 2009, made via written memoranda to the Zoning Board (which memoranda are incorporated herein by reference) and verbal commentary during the Zoning Board's meetings pertaining to the review and evaluation of the proposed action; and

WHEREAS, the Town of Big Flats Planning Staff provided staff reports dated January 20, 2009 and February 17, 2009; and

WHEREAS, as stated in New York Zoning Law and Practice, 4th Edition, "it is necessary to distinguish sharply between a variance, which may be granted by the zoning board of appeals, and an amendment which can be adopted only by the legislative authority of the municipality"; and

WHEREAS, this board finds the overall relief requested would alter the intended density of the district and put the board in a position where approval of such variances would be, in essence, equivalent to a zoning amendment, thus in violation of NYS Town Law Section 267-b; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009 this board finds criteria #1, BFZL 17.60.120-B, to fail as outlined in the Staff Report dated February 17, 2009; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #2, BFZL 17.60.120-B, to fail as outlined in the Staff Report dated February 17, 2009; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #3, BFZL 17.60.120-B, to fail as outlined in the Staff Report dated February 17, 2009; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #4, BFZL 17.60.120-B, to fail as outlined in the Staff Report dated February 17, 2009; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #5, BFZL 17.60.120-B, to fail as outlined in the Staff Report dated February 17, 2009; and

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Big Flats hereby determines, pursuant to the provisions of SEQR 6 NYCRR Part 617, that the proposed Unlisted action will not have a significant impact on the environment and that preparation of an Environmental Impact Statement will not be required, thereby issuing a Negative Declaration; and

FURTHER RESOLVED, to deny approval of the Area Variances Requested by RE One, LLC, 34 Retirement Dr., Horseheads NY 14845, based on the review of the criteria in the BFZL and the permitted action by board of appeals § 267-b.

CARRIED: **AYES:** Rowe, Williams, Clark, Hanson and Lantz
 NAYS:
 ABSTAINED:

Dated: Tuesday, February 24, 2009
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

Discussion:

This variance request was tabled at last month's meeting. The current staff report includes further review. The five variance requests presented last month ultimately become 57 variances. Based upon case law and statutes, staff feels this is out of the realm of this board, and is more of a legislative action than a zoning board action. Staff recommends denial based on these reasons as well as the information received and on record to date.

1. Whether an undesirable change will be produced in the character of the neighborhood.
Hanson, fails; Rowe, fails; Clark, fails; Williams, fails; Lantz, fails
2. Whether the benefit sought can be achieved by some other feasible method.
Hanson, fails; Rowe, fails; Clark, fails; Williams, fails; Lantz, fails
3. Whether the requested variance is substantial.
Hanson, fails; Rowe, fails; Clark, fails; Williams, fails; Lantz, fails
4. Whether the proposed variance will have an adverse impact on the neighborhood.
Hanson, fails; Rowe, fails; Clark, fails; Williams, fails; Lantz, fails
5. Whether the alleged difficulty was self-created

Hanson, fails; Rowe, fails; Clark, fails; Williams, fails; Lantz, fails

Balance Test Fails 5-0

**Motion to adjourn at 9:32pm by Williams, seconded by Hanson, Discussion, None,
Motion carries 5-0.**

Meeting adjourned at 9:33 pm

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
SPECIAL MEETING MINUTES
MARCH 2, 2009

ZONING BOARD OF APPEALS
TOWN OF BIG FLATS
COMMUNITY CENTER
CONFERENCE ROOM

MEMBERS PRESENT: Joe Rowe, Diane Lantz, Don Williams, Heather Hanson, Tom Clark

MEMBERS ABSENT: Richard Seely

STAFF: Stephen Polzella, Director of Planning, Brenda Belmonte, Secretary

GUESTS: None

ROLL CALL

Chair Rowe called the meeting to order at 7:00pm stating this special meeting was advertised in the Elmira Star-Gazette on Saturday, February 28, 2009.

RESOLUTION ZBA-9-2009

**Hampton Inn – Sign Variance
Tax Parcel # 58.03-1-1.5**

Resolution by: Lantz

Seconded by: Hanson

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for a Sign Variance on January 16, 2009 and held a public hearing on February 24, 2009; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2009-23, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination and to consider the options in the Staff Report to the ZBA to be dated February 17, 2009 and decide the most appropriate option; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated February 17, 2009; and

WHEREAS, granting this sign variance would provide relief from BFZL 17.52, Signs; and

WHEREAS, the Town of Big Flats Zoning Board of Appeals denied the request, Resolution ZBA-7-2009; and

WHEREAS, NYS Town Law Section 267-a (12) states, “A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board”; and

NOW, THEREFORE BE IT RESOLVED, to initiate a rehearing of the previously denied application for a sign variance for Tax Parcel # 58.03-1-1.5 by Mr. David Lubin. The rehearing will be scheduled for March 24, 2009.

CARRIED: AYES: Rowe, Williams, Hanson, Lantz and Clark
NAYS: None

Dated: Tuesday, February 24, 2009
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

Discussion:

Polzella explained, due to the motion made at the February 24, 2009 ZBA meeting; if an affirmative vote of a majority of all members of the board is not attained, the appeal is denied. Staff recommends that someone make a motion tonight to open the topic for rehearing as permitted via NYS General Municipal Town Law, Section 267-a. A public hearing would be scheduled for the March 24, 2009 meeting.

Rowe stated that when the motion that was on the table did not get approved, the applicant should have walked away with something instead of nothing. He should have at least been approved for the requested façade sign.

If this process fails to garner a unanimous vote tonight, or at the next meeting, the applicant would be outright denied and would have to reapply with a new application and fees.

Clark asked if the applicant requested this meeting.

Polzella stated no, it was recommended by staff.

Rowe said we have to think about if the motion is brought back on the table at the meeting on March 24th. The concern is whether this board will come to a unanimous agreement on something requested by the applicant.

The applicant is allowed one freestanding sign. Rowe feels, and Williams agrees, that the sign on the front of the building at the requested height would not be a problem.

Polzella stated it appears as if the consensus is that this board is unanimous in agreeing to Option 4 from the staff report (Deny six of the seven requests – allowing a sign high on the front, and permitting a second freestanding sign).

Rowe, commenting on the number of signs on the freeway, said there are three hotels there and anyone should be able to tell the difference. Signs on the side are not needed.

Polzella recommends refuting the claim brought up by the applicant at the meeting on February 24, 2009, regarding the DOT sign issue until documentation is presented from NYS DOT. Staff has investigated the claim; the lodging sign is currently full, however, other signs in the area have more than four parties advertised. The idea is NYS DOT will accommodate the businesses that pay the fee. Until documentation is provided, staff recommends this board take that position. Polzella said the applicant was also misleading regarding the Raymour and Flanigan issue. That variance was for the sign to face their parking lot, not to provide height relief or additional façade relief.

Hanson asked if the applicant would make an entire presentation again.

Polzella replied there will be another hearing. The applicant will make their case, staff will make the case from the Town perspective, and other interested parties will be heard. Once the hearing is closed, the board does not need to hear from anyone unless the board asks them a question at which time the answer should be short and to the point.

Member Comments

Clark feels some applicants do not know what they need, and asked if they could be supplied with a checklist.

Polzella said it depends on the application to the ZBA what information is necessary.

Rowe feels we need to make sure, when the applicant is coming before us, that we can inform them what is needed.

Clark asked if the staff report is given to the applicant prior to the meeting.

Polzella answered that staff report is for the zoning board or planning board, not for the applicant, and said he would look in to a checklist.

Clark said if they had it ahead of time it would help.

Motion to adjourn at 7:43pm by Williams, seconded by Lantz, Discussion, None, Motion Carris 5-0.

Meeting adjourned at 7:44pm

**ZONING BOARD OF APPEALS
MEETING MINUTES
MARCH 24, 2009**

*Filed with
Town Clerk
March 26, 2009*

**TOWN OF BIG FLATS
COMMUNITY CENTER
ROOM 'D'
7:00PM**

Members Present: Joe Rowe, Heather Hanson, Tom Clark, Don Williams

Members Absent: Dick Seely

Staff Present: Stephen Polzella, Director of Planning, Brenda Belmonte, Secretary

Guests: Ernie Hartman, Lee Sinsebox

ROLL CALL

Chair Rowe called the meeting to order at 7:00pm, noting member Dick Seely was absent.

MINUTES

February 24, 2009

Motion by Clark, seconded by Williams, to approve the minutes of February 24, 2009, Discussion, None, Motion Carries 4-0.

March 2, 2009, Special Meeting

Motion by Williams, seconded by Hanson, to approve the minutes of the March 2, 2009 Special Meeting, Discussion, None, Motion Carries 4-0.

PUBLIC HEARING

**Candlewood Suites Area Variance
Tax Parcel #58.01-2-35.32**

Chair Rowe opened the public hearing at 7:02pm, noting it had been duly published in the Star Gazette.

Speaking for:

Polzella said the planning board recommended approval of this variance, as it will not have a negative impact to the neighborhood. There are other options available to the applicant, however that would involve relocating the dumpster, which is currently proposed in the best possible location. Staff feels this would be a minor change, and recommends approval.

Speaking against: None

Public Hearing closed at 7:04pm

RESOLUTION ZBA-10-2009
Candlewood Suites – Area Variance
Tax Parcel # 58.01-2-35.32

Resolution by: Williams

Seconded by: Clark

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for an Area Variance on February 12, 2009 and held a public hearing on March 24, 2009; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2009-29, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination with a favorable recommendation; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated March 17, 2009; and

WHEREAS, granting this area variance will provide a 9 ft. relief from BFZL 17.16.020, Minimum Front Setback; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #1, BFZL 17.60.120-B, to pass because An undesirable change will not be produced by granting this variance. The development is 9 feet short of the required 25 feet, however, with placement of the existing ingress, egress and regress water service easement, the front property line has an additional ~30 ft. easement as additional setback; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #2, BFZL 17.60.120-B, to pass because the benefit sought can be achieved by some method, the dumpster location could be relocated, however, this Board and the Town of Big Flats Planning Board finds the proposed location of the dumpster is the most preferred possible location; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #3, BFZL 17.60.120-B, to fail because the request is for 36% relief; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #4, BFZL 17.60.120-B, to pass because the granting of this variance will allow a hotel to be developed as designed in a vicinity which already includes three hotels; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #5, BFZL 17.60.120-B, to be a split decision two votes pass and two votes fail because the alleged difficulty is self-created, however in the best interest of aesthetics, the proposed site layout is the best alternative. Also, prior variance approvals certainly assisted in the alleged difficulty; and

NOW, THEREFORE BE IT RESOLVED, for the purposes of SEQRA, this board defers the environmental review to the Town of Big Flats as Lead Agency for the coordinated review of an Unlisted action; and

FURTHER RESOLVED, to approve the Area Variance Request by Candlewood Suites, to provide a 9 ft. relief from BFZL 17.16.020, Minimum Front Setback due to the property having an easement on the neighboring parcel, which shall remain undeveloped due to underground utilities, providing additional setback area between Colonial Dr. and the proposed hotel.

CARRIED: AYES: Rowe, Hanson, Williams, and Clark
NAYS: None

Dated: Tuesday, March 24, 2009
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

Discussion:

Criteria Review

1. Whether an undesirable change will be produced in the character of the neighborhood or community.
Clark, Pass; Williams, Pass; Hanson, Pass, Rowe, Pass
2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue.
Rowe, Pass; Williams, Pass; Clark, Pass; Hanson, Pass
3. Whether the requested area variance is substantial.
Rowe, Fail; Williams, Fail; Clark, Fail, Hanson, Fail

4. Whether the proposed area variance will have an adverse affect in the neighborhood.
Clark, Pass; Rowe, Pass; Williams, Pass, Hanson, Pass
5. Whether the alleged difficulty of compliance with this title was self-created.
Rowe, Fail; Williams, Pass; Hanson, Fail; Clark, Pass

Criteria Review Passes 3-2

Hampton Inn Signs Variance
Tax Parcel #58.03-1-1.5

Chair Rowe opened the public hearing at 7:15pm, noting it had been duly published in the Star Gazette.

Speaking for:

Staff recommends a motion to approve an extra freestanding sign as well as the requested sign on the front, southeast face, of the building at the proposed height of 51-ft.

Speaking against: None

Public Hearing closed at 7:16pm.

RESOLUTION ZBA-11-2009
Hampton Inn – Sign Variance
Tax Parcel # 58.03-1-1.5

Resolution by: Williams
Seconded by: Clark

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for a Sign Variance on January 16, 2009 and held a public hearing on February 24, 2009; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2009-23, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination and to consider the options in the Staff Report to the ZBA to be dated February 17, 2009 and decide the most appropriate option; and

WHEREAS, the Town of Big Flats Zoning Board of Appeals, Resolution ZBA-9-2009, initiated a rehearing of the previously denied application for a sign variance for Tax Parcel # 58.03-1-1.5 and held said hearing March 24, 2009; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff reports dated February 17, 2009 and March 17, 2009; and

WHEREAS, granting this sign variance would provide relief from BFZL 17.52, Signs; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009 this board finds criteria #1, BFZL 17.60.120-B, to pass because the proposed action is in direct relation to the neighborhood; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #2, BFZL 17.60.120-B, to fail because several options presented in the Staff Reports dated February 17, 2009 and March 17, 2009 are adequate; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #3, BFZL 17.60.120-B, to fail because the request is to install three additional signs (beyond the BFZL allowance) and to install all four façade signs with 42% relief from BFZL sign height regulations; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #4, BFZL 17.60.120-B, to fail based on the potential traffic impacts to the neighborhood related to the request submitted; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #5, BFZL 17.60.120-B, to fail because the applicant knowingly purchased the property and constructed a Hampton Inn; and

WHEREAS, the proposed action is an Unlisted action pursuant to SEQR 6 NYCRR Part 617 and the Zoning Board of Appeals of the Town of Big Flats has conducted an uncoordinated review as lead agency; and

WHEREAS, the Planning Board has considered the Short Environmental Assessment Form and other materials submitted by the applicant in support of the proposed action, has considered the comments of its staff reports through March 17, 2009, made via written memoranda to the Zoning Board (which memoranda are incorporated herein by reference) and verbal commentary during the Zoning Board's meetings pertaining to the review and evaluation of the proposed action; and

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Big Flats hereby determines, pursuant to the provisions of SEQR 6 NYCRR Part 617, that the proposed Unlisted action will not have a significant impact on the environment and that preparation of an Environmental Impact Statement will not be required, thereby issuing a Negative Declaration; and

FURTHER RESOLVED, to deny all relief requested with the exception of the request for a façade sign to be installed fifty one (51) feet above finished grade on the southeast (SE) face (above the main entrance) of the structure to be constructed on Tax Parcel # 58.03-1-1.5 and also to permit a second twelve (12) foot freestanding sign at the southwest (SW) corner of the property to provide a safe alternative to additional façade signage outside of a vehicle operators' vision zone.

Request Denied: **AYES:** Williams, Rowe, Clark and Hanson
NAYS: None

Dated: Tuesday, March 24, 2009
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

Criteria Review

1. Whether an undesirable change will be produced in the character of the neighborhood or community.
Rowe, Pass; Williams, Pass; Hanson, Pass; Clark, Pass
2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue.
Rowe, Fail; William, Fail; Hanson, Fail; Clark, Fail
3. Whether the requested area variance is substantial.
Rowe, Fail; Williams, Fail; Hanson, Fail; Clark, Fail
4. Whether the proposed area variance will have an adverse affect in the neighborhood.
Rowe, Fail; Williams, Fail; Hanson, Fail; Clark, Fail
5. Whether the alleged difficulty of compliance with this title was self-created.
Rowe, Fail; Williams, Fail; Hanson, Fail; Clark, Fail

Criteria Review Fails 4-1

Polzella stated, for the record, this vote met the requirements of a re-hearing.

Member Comments

Discussion regarding possible revisions to the applicant's checklist and to the Rules of Procedure.

**Motion to adjourn at 7:39pm by Williams, seconded by Hanson at 7:39pm,
Discussion, None, Motion Carries 4-0.**

Meeting adjourned at 7:40pm.

**TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
APRIL 28, 2009**

*Filed with
Town Clerk
May 5, 2009*

**7:00PM
COMMUNITY CENTER
ROOM 'D'**

Members Present: Don Williams, Tom Clark, Diane Lantz, Harry King, Dick Seely

Members Absent: Joe Rowe, Heather Hanson

Staff Present: Steve Polzella, Director of Planning, Brenda Belmonte, Secretary

Guests: Michael Watts, Jeff O'Donnell, Gordon Schuehler, Mary Schuehler, Jim Kucko, Julie Kucko, Nancy Beebe, Marcia Hudock

Vice Chair Don Williams called the meeting to order at 7:00pm, noting Chair Joe Rowe and Heather Hanson were absent, with Diane Lantz and Harry King as alternates.

Minutes

Minutes of March 24, 2009 tabled until the next meeting due to not enough members present who are eligible to vote.

PUBLIC HEARING

**Kucko Enterprises / The Dairy Barn
Sign Variance
Tax Parcel #66.02-2-31.32**

Vice Chair Williams opened the public hearing at 7:01pm, noting it was duly published in the Star Gazette.

Speaking For:

Julie Kucko stated that prior to purchasing the Dairy Barn, she met with town staff at that time, and was asked if her intent was to keep the business open. She was told that the Laberge Design Group had considered the barn to be a huge asset. Kucko felt that the town staff was excited to hear of the future business plans. At that time she also expressed the need to utilize the vacant

portion of the building for financial support. Staff at that time felt Kucko's plans were compatible with what the town would like, and agreed to the planned improvements as well as the proposed added business. After purchasing the business, Kucko said she was told that it was not zoned for the planned uses. No one ever said they were nonconforming or that the signs were an issue. Maybe she should have read the 'big town book', but she would not have understood it. They did not know they could not do any improvements or add any uses. \$100,000 of improvements had already been done; where is the accountability? Kucko said she told Polzella that she had 'gone to the top' at that time. He informed her there is no record of that, so it holds no value. Kucko said she had also asked Polzella if it would be beneficial to ask prior staff to confirm her statements and was told no. Kucko recently spoke to the County Planning Department and to legal counsel as to whether a variance could be allowed with conditions. One county official felt the request could have been granted and could not understand why the town would not want to see improvements. Kucko has been informed that only \$13,900 of improvements would be allowed over the life of the property. Is this realistic? The suggested new freestanding sign would need to be subtracted from that amount, which would leave little remaining for improvements. Staff has stated that if the business were sold, the new owner would be informed that all of the signs are non-conforming, and would also be made aware of the allowable amount for improvements. Kucko went on to say many businesses in Big Flats have more than one façade sign as well as an additional freestanding sign. It is a struggle just to stay afloat and keep up with chains and businesses that have a large advertising budget and a large volume of customers. The goal is to make the barn a better place. In this economical environment they are asking to please help the little people, the true small businesses. Without local support the small businesses will disappear. Kucko would like to request two façade signs, with the sign on the north side having the following conditions: That if a new building was constructed, the owner must seek approval unless it is used as an ice cream stand and restaurant.

Polzella gave his explanation in reply to the applicant's comments: Town staff noticed new signs had been installed at the barn. Subsequently the applicant was cited for a zoning violation and for installing the signs without a building permit. The applicant states she was told it was allowed, however there is no documentation showing that to be accurate. Polzella referred to section 17.52 of the town code; any preexisting and/or nonconforming protection has expired. Staff recommends that the ZBA deny the request as submitted and allow one façade sign that complies with code on whichever side the applicant chooses. The applicant does have a hardship as to visibility. The relief would be from location. The applicant is allowed one 40 sq ft freestanding sign, 36ft in height. The use of NYS DOT Tourist Destination signs is also available as well as one portable sign, which is currently being utilized (and is technically not to be used more than 4 weeks per 12 months).

Kucko stated she received a violation after asking previous staff for use of the signage that was present when the barn was purchased (but had been removed for maintenance). She was told they could repair and reinstall, but not replace the signs. They were not informed of a time limit and/or the need for a building permit. The barn suffered from deferred maintenance and has undergone significant renovation. There are still two ice cream cones, one 4 x 8 sign, and one cow that are not attached. Visibility is an issue. Does the town have documentation of the exact time the signs were taken down? Kucko said she purchased the barn after 2003, which is when staff has said the sign law was instated. They were never notified of the law. Doesn't the town

have an obligation to notify us that these things are happening? Kucko said again, they did not own the barn in 2003 so they had no clue. Her opinion is that is what they pay the officials for.

Kucko believes that staff failed to include a portion of the barn when measuring the maximum aggregate sign area. This is a commercial neighborhood and other businesses have signs on several sides of their buildings. Kucko then referred to the staff report's comment that granting the variance would produce an undesirable change in the neighborhood. Are there any records of how many accidents have happened over the last 20 years due to their signage? Kucko commented on what she feels are contradictions between what was stated at the planning board meeting, and what is listed in the staff report regarding other businesses having more than one façade sign.

Polzella noted for the record, it is the same; he has not changed any staff report.

Kucko said again that Polzella verbally stated there were no businesses in the area with signs on several sides.

Polzella denied that statement, noting what was actually said is in the records, that he did not notice anything out of the ordinary but will take note and recheck.

Kucko referred to three façade signs on the Applied building. She stated she was told she would be allowed a 36ft high freestanding sign. Where could it be so close to the road? Also, the barn is taller than 36ft so it wouldn't be visible on the sides that it would need to be seen from. Kucko's opinion is that Polzella has changed what he said he would recommend. She feels she could agree to having two façade signs. This is solely a business district so there would be no adverse affect. Kucko also feels this was not self-created. The signs were pre-existing and they had approval to remove them for improvements. She stated she is confused by the staff comments referring to the historic character of the building. How is there any value when you can only do \$13,900 in repairs?

Kucko then referred to what she feels are contradictions in the staff report.

Polzella explained the typical layout of any staff report; the first section is the review according to code. The second section refers to staff recommendation. It is important to note the differentiation between recommendation and staff's code review.

Kucko disagrees with the suggested use of tourist destination signs. She also disagrees with being allowed only a maximum of 140 sq ft. Who needs more signage than retail? Kucko said she does realize that everything is nonconforming, however they have made an investment and need to seek what they can to place value back into the property. Kucko feels the town has put no value on her property.

Polzella stated that the applicant obviously harshly disagrees with his interpretation and that is why we are here. He is simply doing his job and trying to serve the town. For the record, only one variance was previously denied, one variance was withdrawn, and the applicant walked out of the meeting. The planning board recommended that they be allowed to keep the signs that

were up. Polzella reminded the board, that as hard as it may be with the emotion and financial situations put forth by the applicant, unfortunately none of that is part of the criteria.

Mike Watts, owner of Antique Revival, 300 West Hill Rd. A, stated he has owned his business since 2000. It was vacant three years prior to his purchase. Watts has found that he could not survive without signage, and has several issues with this matter. Watts himself has three façade and one freestanding sign. He noted he had been cited for flying his advertising blimp too high. He is doing whatever he can to draw people off the highway.

Polzella clarified that Watts was not cited, but instead was given a verbal warning. Big Flats does not allow signs over 36ft.

Watts feels there is nothing in the town law book that has anything to do with how businesses need to survive - maybe the law needs to be changed.

Polzella replied that although he may not agree with everything in the town law, he has to abide by it. Revisions are being worked on as we speak, but nothing new has been adopted yet.

Watts said he would not have his business without his signs – it would not be viable. More than 50% of his customers have said they saw his sign from the highway. Without that visibility there is no way he could make it. Watts referred to the Laberge study and asked what is foreseen in the Daniel Zenker area.

Polzella said that is not for this board to decide, however, workshops will be held in the future addressing those issues.

Watts feels it would be beneficial to the entire community to have striving businesses in town that pay taxes.

Seely clarified that it is the ZBA's job to interpret town law. There have been repeated variance requests, which have been referred back to the planning board to perhaps make some changes or modify the requirements. Some of the code may be outdated, but it is this board's job to look at the town law.

Stan Koziattek, business owner on Daniel Zenker Drive and Chambers Road, stated he is disappointed at having to attend a meeting for a sign on a barn. There are 8000 people in town. We are in tough economic times and we should not put the Dairy Barn out of business. If we can't control our own community we have no control on our nation. Koziattek feels this is a non-issue and is ridiculous.

Jeff O'Donnell, 88 Belaire Dr., and owner of Wilson Restaurant Equipment, feels this is not a significant variance. He suggests retail be allowed more signage. O'Donnell's is a commercial business and doesn't need the signs; customers know where he is located. Retail businesses need more impulsive shoppers and larger signs. O'Donnell sees no problem with the signage requested. There are very few houses in that area, and Kucko has done a lot of work to make the building look nicer. This is a small variance request in order to make the business run more

effectively. The applicant was willing to put up better looking signs, but it was against the code. O'Donnell feels it is reasonable to request a sign on the north side of the building.

Polzella stated his desire to prevent what appears to be extreme dislike or hatred towards staff in the future. Staff's job is to interpret the law. Please try to understand that you will hear things you do not like. Tonight's reports are based on staff interpretation as to what the law allows in granting the minimum legal variance. If this board chooses to do differently they can, they have, and they will. Staff recommended the applicant's prior request to be granted conditionally, and the board voted against that recommendation.

Stan Koziatsek referred to the amount the applicant is allowed for improvements, saying he built a car wash five years prior to Red Lobster coming to the area. Koziatsek gave details as to what was required of him when he built the car wash, and stated he feels Red Lobster was allowed to be built with much less restriction five years later, leaving him feeling discriminated against.

Polzella explained that the \$13,900 allowed for improvements is based on 50% of the assessed value of the barn, which is \$26,000. If Red Lobster were reviewed as nonconforming, a determination would be made at that time.

Gordy Schuller, accountant for the applicant, said he was totally floored by the amount of \$13,900. It seems the town does not want improvements and is trying to drive businesses away - you don't let a beautiful barn rot.

Polzella clarified that preventative maintenance is discussed in the town code. You can maintain your property, and that is obviously encouraged.

Kucko recalled Polzella saying that the Dairy Barn would not be able to replace the roof for that amount of money.

Polzella explained that replacing the roof would be allowed if a code officer or engineer said it was needed.

Schuller stated that this was a barn that has been made into a great gathering spot. He is fully in favor of granting a variance for advertising.

Glenn Farr, 7 Farr Dr., is in favor of allowing the signs. Let them go home and quit all this baloney. It should have ended a long time ago. The Dairy Barn has been there for years. It's time the law is changed. The town has been procrastinating on Daniel Zenker Drive for a long time.

Nancy Beebe, 2 Easterbrook Dr., said she is a patron of the Dairy Barn as well as a resident of Big Flats. The barn is historical and the Kuckos have done nothing but improve the look of it. Beebe feels it is necessary for retail businesses to have signs. It is sad to see the farms leave our area, but things do change. Any of the older people would say it is wonderful - these small gathering places have been here for many years. The town should help the small business owners. Beebe said the allowed sign size seems ridiculously small. She cannot see well and

would need to slow down to read it, which she believes would cause more of a traffic issue. The town should be looking out for its residents and this issue seems so small compared to others. Please keep them here and support them.

Public hearing closed at 8:18pm.

RESOLUTION ZBA-12-2009

Kucko – Sign Variance

Tax Parcel # 66.02-2-31.32

Resolution by: Seely

Seconded by: Clark

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats received an application from Jim and Julie Kucko, owner of tax parcel #66.02-2-31.32, for relief from Section 17.52 of the Town of Big Flats Zoning Law, Signs; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2009-38, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination with a recommendation the board grant any variances necessary to allow the applicant to keep the signs that were already installed in place with a condition that the variance be conditioned to the existing structure; and

WHEREAS, the Chemung County Planning Board reviewed the action and returned the referral for local determination; and

WHEREAS, a public hearing on the request was held on April 28, 2009; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated April 21, 2009; and

WHEREAS, the variance request as submitted included the following variances:

1. Increase in the “number of signs permitted, facade” by 200%
2. Increase in the “maximum sign area per face, South Façade” by 51%
3. Increase in the “maximum sign area per face, North Façade” by 51%
4. Increase in the “maximum sign area per face, West Façade” by 1%
5. Increase in the “maximum aggregate sign area” by 194%; and

WHEREAS, the applicant, during the public hearing, modified the request to remove the West Façade from consideration, to lower the increase of “number of signs permitted, facade” to 100% and to lower the increase in “maximum aggregate sign area” to 113%; and

WHEREAS, the proposed action is an Unlisted action pursuant to SEQR 6 NYCRR Part 617 and the Zoning Board of Appeals of the Town of Big Flats has conducted an uncoordinated review as lead agency; and

WHEREAS, the Planning Board has considered the Short Environmental Assessment Form and other materials submitted by the applicant in support of the proposed action, has considered the comments of its staff report dated April 21, 2009, made via written memoranda to the Zoning Board (which memoranda are incorporated herein by reference) and verbal commentary during the Zoning Board’s meetings pertaining to the review and evaluation of the proposed action; and

WHEREAS, this board has evaluated potential impacts to public health, safety and general welfare; and

WHEREAS, this boards considerations and review have taken into account the potential marketing hardship created by the location of the road to the pre-existing structure; and

WHEREAS, on the basis of materials submitted by the applicant on and before April 28, 2009 this board finds criteria #1, BFZL 17.60.120-B, to pass because the signage has existed in past years on this structure; and

WHEREAS, on the basis of materials submitted by the applicant on and before April 28, 2009, this board finds criteria #2, BFZL 17.60.120-B, to pass because the applicant does have other avenues as outlined in the April 21, 2009 Staff Report; and

WHEREAS, on the basis of materials submitted by the applicant on and before April 28, 2009, this board finds criteria #3, BFZL 17.60.120-B, to fail because the lowest individual request is 52%; and

WHEREAS, on the basis of materials submitted by the applicant on and before April 28, 2009, this board finds criteria #4, BFZL 17.60.120-B, to pass because the signage has existed in past years on this structure; and

WHEREAS, on the basis of materials submitted by the applicant on and before April 28, 2009, this board finds criteria #5, BFZL 17.60.120-B, to fail because the applicant knowingly purchased the property after the BFZL was created; and

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Big Flats hereby determines, pursuant to the provisions of SEQR 6 NYCRR Part 617, that the proposed Unlisted action will not have a significant impact on the environment and that preparation of an Environmental Impact Statement will not be required, thereby issuing a Negative Declaration; and

FURTHER RESOLVED, to deny the request as submitted and amended by the Jim and Julie Kucko, 124 Que Vista Dr. W., Horseheads NY 14845; and

FURTHER RESOLVED, to grant conditional approval to Jim and Julie Kucko, 124 Que Vista Dr. W., Horseheads NY 14845 which provides an increase of “number of signs permitted, facade” by 100% to two (2), an increase in the “maximum sign area per face, South Façade” by 51% to 198 sq. ft., an increase in the “maximum aggregate sign area” by 26% to 315 sq. ft, based on the review of the criteria in the BFZL, with the condition limiting this variance to the current structure due to its location to Hibbard Rd.

Request Granted: **AYES:** Lantz, Clark, King, Williams, Seely

NAYS:

ABSTAINED:

Dated: Tuesday, April 28, 2009

BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

Don Williams

Vice-Chairman, Zoning Board of Appeals

DISCUSSION:

Seely stated the issue he has is with the size of the requested variance and setting precedence. On the other hand, he also knows these signs were there in the past, and the applicant just wants to put them back.

Williams asked how many signs were on the building, when were they taken down, and when were they put back up? Did you take the sign down?

Julie Kucko answered yes; we had to have it painted.

Williams asked did you hire somebody to paint?

Kucko replied yes, does the town have documentation for that?

Williams asked when was the barn painted?

Kucko said no one ever told them there was a time limit or a building permit requirement.

Williams said if he were to put a 4' x 5' deck on the rear of his home, he would know that he needed to get a permit. It wouldn't hurt to ask.

Kucko said she wanted to use an updated sign, but was told she was only allowed to repair and reinstall.

Jim Kucko explained that the letters were made of wood and had rotted. They had new ones made and repaired / replaced them.

Julie Kucko said if they were told a permit was needed, or that there was a time limit they would have given it their best effort.

Williams stated that there is a reasonable time to replace something that was removed and that the applicant should know that. You have no idea when the barn was painted? That sounds unreasonable.

Jim Kucko said he is sure they have a dated receipt. Each crack had to be filled. He works fulltime so his time is limited.

Clark mentioned there was a period of time when there were no signs on the building.

Julie Kucko said they were leaning on the barn at that time. It didn't behoove them to have the sign down – business was slow. When there were signs on the backside she received many comments from people who had seen them. Also, when a sign was put on the south side, they had an unbelievable influx of traffic and heard nothing but compliments. Does the town have any documentation that somebody has issues with the signs?

Polzella asked the applicant if she would be willing to modify the sign to comply if the variance was granted.

Julie Kucko answered that she would prefer to have what is requested – they are already downsizing.

Seely noted that the granted variance must be minimal. He would be in favor of a sign on the north and south side, but not the west side.

Kucko stated she had pictures of the existing Applied signs.

Polzella explained that Applied is also in violation, and it will be addressed as time allows. Antiques Revival is also in violation. Staff is currently working on zoning updates. Once the new sign law is adopted, a sign analysis will be done, and everyone will be notified of his or her violation as well as of the 5-year amortization schedule. We are trying to make the law more flexible. It is quite a process; it is a full local law.

Seely asked Polzella to review the sizes once again.

Polzella clarified; the south side is 198 sq ft, and allowable is 166 sq ft. This would require a variance request of 32 sq ft, as well as a request for permitted location. The north side will depend on board interpretation as to how the faces are measured.

Kucko reiterated she had asked for a variance with conditions.

Polzella explained that the requested conditions sound reasonable from the side of the applicant; however, it needs to be looked at from the town's perspective and future owners.

Kucko feels the request is reasonable. She is trying to be flexible by asking for less than the original request.

Seely inquired as to the future outcome if the variance was granted and the barn ceased to exist.

Polzella explained that the conditions would need to be specific enough to apply to the building. The rights to the business itself would apply until the building is torn down.

Clark asked if the applicant could have a new smaller sign designed.

Polzella replied yes, a variance would allow a sign at whatever size the board chooses. The board would need to grant the minimum relief allowed.

Seely feels the location is a non-issue; you cannot put a sign on the front.

Williams suggested reducing the size of the hot dog and the ice cream cone, which may bring the signage into compliance.

Julie Kucko stated "so what you are saying is Jim's wiener is too big?" She stated once again, since those signs were installed, the influx of traffic was surprising. Previously, the ice cream cones on the building were taken down in the winter, and replaced in the summer. They are important. The original request was for three façade signs (west, east, and north sides), and now the request is for two.

Polzella asked the applicant her thoughts on having something new made.

Kucko commented on how much time and energy went into redoing the current letters. If they were moved closer together, would it make a difference?

Seely is concerned with setting a precedent.

Polzella agreed; lawyers and/or applicants continually refer to precedents. That is what this board needs to think about. Others will surely reference a precedent. We have to treat everyone fair.

Lantz feels that the applicant needs signs on the north and south side, and we need to do what we can.

Kucko asked how the building surface area was calculated, and Polzella read the code pertaining to that. She then asked if they could have an option of having "Dairy Barn", or "Ice Cream and Café?"

Polzella explained that "Ice Cream and Café" is an accessory sign; it would need to be the identifying sign, as accessory façade signs are not permitted in the BN2.

The board reviewed the five criteria according to the motion on the table:

1. As to whether an undesirable change would be produced in the character of the neighborhood.
Clark, passes; Seely, passes; King, passes; Williams, passes; Lantz, passes.
2. As to whether the benefit sought can be achieved by any other method?
Clark, fails; Seely, fails; King, fails; Lantz, fails; Williams, fails
3. As to whether the requested variance is substantial.
Clark, fails; Seely, fails; Williams, fails; Lantz, fails; King, fails
4. As to whether the proposed variance will have an adverse affect on the neighborhood.
Clark, passes; Seely, passes; King, passes; Williams, passes; Lantz, passes.
5. As to whether the alleged difficulty was self-created.
Clark, passes; Seely, fails; King, fails; Lantz, passes, Williams, fails

Criteria Fails 3-2.

Motion to adjourn at 9:20pm by Seely, seconded by Lantz, Discussion, None, Motion Carries 5-0.

Meeting adjourned at 9:21pm

Town of Big Flats
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Director of Planning:
Stephen J. Polzella, GISP

P (607) 562-8443
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May 2009

The Zoning Board of Appeals meeting for May 26, 2009 has been cancelled.

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June 2009

The Zoning Board of Appeals meeting for June 23, 2009 has been cancelled.

TOWN OF BIG FLATS
ZONING BOARD OF APPEALS
MEETING MINUTES
JULY 28, 2009

*Filed with
Town Clerk
August 4, 2009*

7:00PM
TOWN OF BIG FLATS
MEETING ROOM

Members Present: Joe Rowe, Don Williams, Dick Seely, Tom Clark

Members Absent: None

Staff Present: Stephen Polzella, Director of Planning, Brenda Belmonte, Secretary

Guests: Tina Lando, Thomas Magnusen, Lindsay Mills, Lance Muir, Diane Lantz, Harry King

Chair Rowe opened the meeting at 7:00pm, noting all members were present.

Minutes

March 24, 2009

Motion by Williams, seconded by Clark to approve the minutes of March 24, 2009, Discussion, None, Motion Carries 4-0

April 28, 2009

Motion by Williams, seconded by Clark to approve the minutes of April 28, 2009, as amended, 4-0.

Public Hearing

Lando Area Variance Request

Rowe opened the public hearing at 7:05pm noting it had been duly published in the Star Gazette.

Speaking for:

Tina Lando, 2614 Corning Rd, Horseheads – The intent is to use the building as office space as zoning allows. An area variance is required due to the lot size being smaller than what is required in the BR district.

Applicant's response to the criteria is as follows:

1. Whether an undesirable change will be produced in the character of the neighborhood?
There would be no negative changes; in fact she feels it would have a positive outcome, as it would fit in with other businesses in the area.

2. Whether the benefit sought can be achieved by some other method.
No
3. Whether the requested variance is substantial.
Applicant feels it is not substantial. The building has existed there for several years.
4. Whether the proposed area variance will have an adverse impact on the neighborhood.
No
5. Whether the alleged difficulty of compliance was self-created.
No

Polzella stated that the driveway is shared with the neighboring storage facility. The proposed use would have a low-intensity traffic flow, with two to four ingresses/egresses per day. There are some traffic concerns as well as concerns with the gravel driveway, and the tendency for vehicles to spin their wheels when pulling out onto County Rte 64.

Staff comments to the 5 criteria are as follows:

1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

Granting a variance for relief from Minimum Lot Area will not create an undesirable change in the character of the neighborhood. Within a 2-mile radius in the Town of Big Flats, more than 500 parcels less than 3 acres exist.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than the requested area variance?

Staff believes that methods other than a variance are limited to none available to the applicant. The lone possibility would be to purchase the neighboring property, which currently has a real estate sign.

3. Whether the requested area variance is substantial?

Yes, the applicant's request is substantial on the grounds that the applicant is asking for an 84% decrease in minimum lot area

4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

Granting a variance for relief from Minimum Lot Area should not have any significant adverse affect or impact on the physical or environmental conditions in

the neighborhood or district. However, the granting of said variance will allow the site to be developed by all interested parties, not just by the existing owner who held the lot in question before the establishment of the Zoning Law. Further though, an approval could be condition to the fact that the applicant is proposing via Site Plan, a low-intensity office use, utilizing an existing building and utilizing an existing shared drive access.

5. Whether an alleged difficulty of compliance with this title was self-created, which is relevant to the decision, but shall not necessarily preclude the granting of the area variance?

This lot is an existing nonconforming lot, however, Chapter 17.56.050 establishes criteria for considering an existing nonconforming lot to comply with lot requirements. This section of the code states that any lot **held** in single and separate ownership ...prior to the adoption of the local law codified in this chapter...that no variance shall be required. The applicant did not **hold** this lot prior to the adoption.... The applicant intends to purchase this nonconforming lot knowing a variance will be required for development.

Staff recommendation is to deny a broad request as submitted, although the board could grant with conditions. However, it needs to be considered that the land was purchased recently and the pre-existing non-conforming use has lapsed.

Speaking against: None

Public hearing closed at 7:14pm

Board criteria review:

1. Whether an undesirable change will be produced in the character of the neighborhood?

Clark, passes; Seely, passes; Rowe, passes; Williams, passes

2. Whether the benefit sought can be achieved by some other method.

Seely commented as to how much additional land would be required to comply, noting the applicant would need to purchase the entire adjoining lot that is currently on the market.

Polzella agreed, saying it would involve a purchase, demo and redevelopment.

Seely then referred to the word 'feasible', saying he understands that as being reasonable.

Rowe said that does not apply to monetary, but instead applies to if there is land available. In this case the land is adjacent, so it is feasible that it could happen. It is not for us to determine the financial feasibility for the applicant.

Clark, passes; Seely, fails; Rowe, fails; Williams, fails

3. Whether the requested variance is substantial.

Clark, fails; Seely, fails; Rowe, fails; Williams, fails

4. Whether the proposed area variance will have an adverse impact on the neighborhood.
Rowe, fails; Clark, passes; Seely, passes; Williams, passes
5. Whether the alleged difficulty of compliance was self-created.
Rowe, fails; Clark, fails; Seely, fails; Williams, fails

RESOLUTION ZBA-13-2009

Lando – Area Variance (Lot Area)

Tax Parcel # 58.03-1-4

Resolution by: Seely

Seconded by: William

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Agostinha Lando, owner of tax parcel #58.03-1-4, for relief from Section 17.16.020 of the Town of Big Flats Zoning Law, Minimum Lot Area per Principal Use; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2009-48, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination with a favorable recommendation pending reasonable conditions; and

WHEREAS, a public hearing was held on July 28, 2009; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated July 17, 2009; and

WHEREAS, granting this area variance would provide a 2.52 acre relief, 84%, from Big Flats Zoning Law 17.16.020, Minimum Lot Area per Principal Use; and

WHEREAS, the proposed action is an Unlisted action pursuant to SEQR 6 NYCRR Part 617 and the Planning Board of the Town of Big Flats made and found a negative declaration of significant environmental impacts Resolution P-2009-48; and

WHEREAS, this board has expressed concern with the idea of permitting any use of this lot due to potential impacts related to traffic and public safety; and

WHEREAS, this boards considerations and review are solely based on the notion that relief would be conditioned to the proposed use of “Office, General or Professional”; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 17, 2009 this board finds criteria #1, BFZL 17.60.120-B, to pass, 4-0; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 17, 2009, this board finds criteria #2, BFZL 17.60.120-B, to fail, 3-1, due to adjacent properties being listed on the real estate market for sale; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 17, 2009, this board finds criteria #3, BFZL 17.60.120-B, to fail, 4-0, because the request is to provide 84% relief; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 17, 2009, this board finds criteria #4, BFZL 17.60.120-B, to pass, 3-1, because the potential impacts of the permitted uses in the district outweigh the benefit to the applicant; and

WHEREAS, on the basis of materials submitted by the applicant on and before February 24, 2009, this board finds criteria #5, BFZL 17.60.120-B, to fail, 4-0, because the applicant knowingly purchased the property with Zoning deficiencies; and

NOW THEREFORE BE IT RESOLVED, to grant approval of the Area Variance Request by Agostinha Lando, owner of tax parcel #58.03-1-4, for relief from Section 17.16.020 of the Town of Big Flats Zoning Law, Minimum Lot Area per Principal Use, based on the review of the criteria in the BFZL.

Request Denied: **AYES:** None
 NAYS: Williams, Rowe, Clarke and Seely
 ABSTAINED:

Dated: Tuesday, July 28, 2009
BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats
Joe Rowe
Chairman, Zoning Board of Appeals

Discussion:

Williams asked if the garage would remain a storage area, and Lando replied yes, it would be storage for the business alone.

Clark asked the applicant what type of business would be there.

Lando replied a small accounting office, which would have minimal traffic.

Clark commented that any traffic would depend on the type of business.

Polzella agreed and said depending on the scale of the business there is a definite traffic concern.

Lando explained that she had tried to purchase the parcel across the road to the east, however the owners are not interested in selling.

Rowe has some concerns with the traffic, however he is more concerned that the space be limited for future use. The current proposal is for a low intensity office use, however it could be sold and the use could change. A variance request for a minimum of 2.5 acres or 84% is huge. If the board were to justify that it would set a precedent at a very high level.

Clark asked what could be done if this variance is not granted. Basically there is a tax parcel that nothing can be done on. Clark feels we need to consider that as well. Could the applicant request a variance to return the use to residential?

Polzella commented that a use variance would be very difficult to receive as all of the criteria must pass.

Rowe, (citing Clark's comments as to what the property could be used for), stated that the applicant is the one who purchased the property. It is not up to this board to bail them out. The board needs to look at what is applicable. You cannot say that 84% is not substantial. To approve this application would be unfair, would set a precedent, and we would receive feedback from other applicants who have previously been denied.

Public Hearing **Mills Windmill**

Chair Rowe opened the public hearing at 7:37pm noting it had been duly published in the Star Gazette.

Speaking for:

Lindsey Mills, 55 Townsend Way, stated he is asking for the variance in order to comply with NYSEDA standards. Overall the windmill would be 93ft tall including the blade length of 13ft.

Polzella noted that the applicant had responded to the five criteria as listed in the staff report. The 93ft tower is lower than already existing towers that cannot be seen; therefore visual impact is not a concern. Staff review of the criteria is as follows:

1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

Granting this variance request, is not likely to produce an undesirable change in the neighborhood. The tower itself will not exceed 80'; the blades of the windmill will add 13' to the total height.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than the requested area variance?
The applicant could have the structure re-engineered, however, the applicant has stated that NYSEDA will not provide any of the resources needed to make the project feasible for a tower height lower than an 80'.

3. Whether the requested area variance is substantial?

The applicant's request is not substantial. The relief requested is a 16% increase in maximum allowable total height. The request is only due to the blades of the windmill. The proposed tower is engineered at 80'.

4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

As stated before, the planning board has already reviewed this project for SEQRA and Ridgeline overlay. The Planning Board found this project not to have any adverse impacts.

5. Whether an alleged difficulty of compliance with this title was self-created, which is relevant to the decision, but shall not necessarily preclude the granting of the area variance?

Yes, the alleged difficulty of compliance is self-created. The applicant is aware of the requirements of the BFZL. However, the necessity of the relief requested is to comply with NYSERDA standards.

Board review of criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?
Rowe, passes; Clark, passes; Seely, passes; Williams, passes
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than the requested area variance?
Rowe, fails; Clark, fails; Seely, fails; Williams, passes
3. Whether the requested area variance is substantial?
Rowe, passes; Clark, passes; Seely, passes; Williams, passes
4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?
Rowe, passes; Clark, passes; Seely, passes; Williams, passes
5. Whether an alleged difficulty of compliance with this title was self-created, which is relevant to the decision, but shall not necessarily preclude the granting of the area variance?
Rowe, fails; Clark, fails; Seely, fails; Williams, fails

Speaking against:

None

Public Hearing closed at 7:48pm

RESOLUTION ZBA-14-2009
Mills – Area Variance Granted
Tax Parcel # 68.00-1-13.4

Resolution by: Williams
Seconded by: Seely

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for an Area Variance on June 23, 2009 and held a public hearing on July 28, 2009; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2009-47, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination with a favorable recommendation; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated July 17, 2009; and

WHEREAS, granting this area variance will provide 13 ft. relief from BFZL 17.36.150(B)(3), Maximum Allowable Height 80'; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 23, 2009, this board finds criteria #1, BFZL 17.60.120-B, to pass, 4-0; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 23, 2009, this board finds criteria #2, BFZL 17.60.120-B, to fail, 3-1; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 23, 2009, this board finds criteria #3, BFZL 17.60.120-B, to pass, 4-0; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 23, 2009, this board finds criteria #4, BFZL 17.60.120-B, to pass, 4-0; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 23, 2009, this board finds criteria #5, BFZL 17.60.120-B, to fail, 4-0; and

WHEREAS, the proposed action is an Unlisted action pursuant to SEQR 6 NYCRR Part 617 and the Planning Board of the Town of Big Flats made and found a negative declaration of significant environmental impacts Resolution P-2009-43; and

NOW, THEREFORE BE IT RESOLVED, to approve the Area Variance Request by Lindsay Mills, 55 Townsend Way, Elmira NY 14903, to provide 13 ft. relief from BFZL 17.36.150(B)(3), Maximum Allowable Height 80'.

CARRIED: AYES:Rowe, Seely, Williams and Clark

NAYS: None

ABSTAINED: None

Dated: Tuesday, July 28, 2009

BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

Joe Rowe

Chairman, Zoning Board of Appeals

Public Hearing

Econo Lodge

Rowe opened the public hearing at 7:52pm noting it had been duly published in the Star Gazette.

Speaking in favor:

Tom Magnusen, representing the applicant, stated that the intention is to place an additional sign on the rooftop. The current signs are partially obscured by a row of pine trees near Taco Bell. Magnusen feels better signage would allow for more efficient traffic flow and safety.

Polzella explained that the first variance request is to allow a second façade sign. Current Town Code allows only one façade sign per building. The second request is to allow another rooftop sign, and rooftop signs are prohibited in the town. If the proposed new sign law is adopted staff will identify all illegal signs in the town at that time. All non-conforming signs will be required to come into compliance within five years. Also, the proposed new law would allow the applicant to have two façade signs, which would eliminate the need for one of the variance requests. Rooftop signs will still be prohibited.

Polzella presented pictures of the Econo Lodge in Painted Post, noting their signs had been nestled between two floors. Staff questions how valuable the requested sign would actually be. It would be seen coming up the exit ramp and driving on the overpass at Chambers Road, but would be hard to see from I86 at 65mph. With the already existing NYS DOT tourist destination signs on the highway, it basically walks you to the door. With the proposed new sign law, Econo Lodge would have to remove or get a variance for the existing rooftop sign within five years, so should we allow another one? Two freestanding signs are currently in place, one of which is non-conforming, but with the new code it could possibly be in compliance. Only one freestanding sign is allowed, and the current one is quite visible when driving on the exit ramp. Staff recommends denying the request for a rooftop sign, especially due to the upcoming changes in the law, and to allow a second façade sign, basically where the applicant would like it, as long as it is on the building. If tabled, the applicant could come back without additional fees; if denied, additional fees would apply.

Seely stated that we cannot control what is already there. The risk would be to grant a variance that would not be allowed in the upcoming new law.

Magnusson stated that the sign on I86 is very valuable from a marketing standpoint. The Econo Lodge symbol has recently changed and people do not recognize it yet. Magnusson said there is not a business in Consumer Square without two signs.

Polzella said yes, however they are non-conforming and will be identified as stated previously.

Speaking against:
None.

Public Hearing closed at 8:08

Board review of criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

Rowe, passes; Clark, passes; Seely, passes Williams, passes

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than the requested area variance?
Rowe, fails; Clark, fails; Seely, fails; Williams, fails
3. Whether the requested area variance is substantial?
Rowe, fails; Clark, fails; Seely, fails; Williams, fails
4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?
Rowe, passes; Clark, passes; Seely, passes Williams, passes
5. Whether an alleged difficulty of compliance with this title was self-created, which is relevant to the decision, but shall not necessarily preclude the granting of the area variance?
Rowe, fails; Clark, fails; Seely, fails; Williams, fails

RESOLUTION ZBA-15-2009

Econo Lodge – Sign Variance Tabled

Tax Parcel # 57.04-1-7.131

Resolution by: Seely

Seconded by: Clark

WHEREAS, the Town of Big Flats Zoning Board of Appeals received a request for a Sign Variance on June 18, 2009 and held a public hearing on July 28, 2009; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2009-50, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination with a recommendation of denial as submitted; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated July 17, 2009; and

WHEREAS, granting this area variance will provide an additional façade sign and would permit the installation of a rooftop sign; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 18, 2009, this board finds criteria #1, BFZL 17.60.120-B, to pass, 4-0; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 18, 2009, this board finds criteria #2, BFZL 17.60.120-B, to fail, 4-0; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 18, 2009, this board finds criteria #3, BFZL 17.60.120-B, to fail, 4-0; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 18, 2009, this board finds criteria #4, BFZL 17.60.120-B, to pass, 4-0; and

WHEREAS, on the basis of materials submitted by the applicant on and before June 18, 2009, this board finds criteria #5, BFZL 17.60.120-B, to fail, 4-0; and

WHEREAS, the proposed action is an Unlisted action pursuant to SEQR 6 NYCRR Part 617 and the Planning Board of the Town of Big Flats made and found a negative declaration of significant environmental impacts Resolution P-2009-49; and

NOW, THEREFORE BE IT RESOLVED, to table the Sign Variance Request by Thomas Magnusen, 66 W. Pulteney St., Corning NY 14830, as per the applicant request.

CARRIED: AYES:Rowe, Seely, Williams and Clark

NAYS: None

ABSTAINED: None

Dated: Tuesday, July 28, 2009

BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

Joe Rowe

Chairman, Zoning Board of Appeals

Discussion:

Rowe reiterated that tabling would allow Mr. Magnusen to go back and talk to ownership. Denial would require new fees and the allowance of only one façade sign.

Magnusson said he would prefer it be tabled so he can confer with ownership to see what they would like to pursue.

Motion to adjourn at 8:16pm by Seely, seconded by Williams, Discussion, None, Motion Carries 4-0.

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August 2009

The Zoning Board of Appeals meeting for August 25, 2009 has been cancelled.

ZONING BOARD OF APPEALS
MEETING MINUTES

SEPTEMBER 22, 2009

*Filed with
Town Clerk
September 29, 2009*

7:00PM
TOWN HALL MEETING ROOM

Members Present: Joe Rowe, Heather Hanson, Don Williams, Tom Clark

Members Absent : Dick Seely

Staff Present: Stephen Polzella, Director of Planning, Brenda Belmonte, Secretary

Guests: Harry King, Jane King, Jim Stander, John Hunter, Dave Harnas

Chair Rowe called the meeting to order at 7:00pm noting member Dick Seely was absent. (Seely's absence is due to recusal).

MINUTES
July 28, 2009

Motion by Clark seconded by Williams, to approve the minutes of July 28, 2009, Discussion, None, Motion Carries 3-0 with Hanson abstaining.

STANDER PUBLIC HEARING

Chair Rowe opened the public hearing at 7:01pm, noting it had been duly published in the Star Gazette.

Speaking in Favor:

Jim Stander, applicant, 27 Liberty Way, Horseheads, stated he did not realize a building permit was required for his sheds. When notified, Stander was also informed of the need to request a variance.

John Hunter, 14 Liberty Way, feels the applicant has always kept his property well maintained and has no issues with the sheds.

Dave Harnas, 145 Ithaca Rd, Horseheads, NY, understands the buildings were built without permits, but believes they are safely and soundly constructed.

Staff Report

Polzella reviewed the criteria as stated in the staff report:

1. Whether an undesirable change will be produced in the character of the neighborhood.
This situation is different than normal in that staff has relied upon the expertise of certified town staff. The Town of Big Flats Assessor, and the Town of Big Flats Code Enforcement Officer have submitted letters containing information that planning staff could not offer. This appears to create an undesirable change.
2. Whether the benefit sought by the applicant can be achieved by some other feasible method.
Staff feels other methods are limited. The lot had already been developed beyond allowable coverage prior to the sheds being built.
3. Whether the requested area variance is substantial.
Yes: the request is to keep two structures, which have been built without a permit and which Code Enforcement says do not appear to meet NYS Building Code requirements.
4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood.
No
5. Whether the alleged difficulty of compliance is self-created.
Yes

Polzella explained that this is a non-conforming lot, which allows a minimum side setback of 3ft. The proposal is for one shed to have a setback of 1-2ft. Additionally, maximum allowable lot coverage is 20% and staff has estimated the current lot coverage at 28%. The planning board decision was to forward the request to the ZBA without recommendation, however staff recommendation is to deny the request as submitted. The assessor and code enforcement officer have supplied sufficient documentation. There is no finding of fact to support an approval.

Speaking against: None

Public hearing closed at 7:13pm

RESOLUTION ZBA-16-2009

Stander Variance

Tax Parcel # 47.04-2-25

27 Liberty way

Resolution by: Williams

Seconded by: Hanson

WHEREAS, the Zoning Board of Appeals of the Town of Big Flats has received an application from Jim Stander, owner of tax parcel # 47.04-2-25, for relief from Section 17.16.020 of the Town of Big Flats Zoning Law, Maximum Lot Coverage and 17.56.050 of the Town of Big Flats Zoning Law, Accessory Setback; and

WHEREAS, the Town of Big Flats Planning Board, Resolution P-2009-63, returned the referral to the Town of Big Flats Zoning Board of Appeals for their determination; and

WHEREAS, a public hearing was held on September 22, 2009; and

WHEREAS, the Town of Big Flats Planning Staff provided a staff report dated September 16, 2009; and

WHEREAS, granting this area variance would provide an ~ 11% relief, from Big Flats Zoning Law 17.16.020, Maximum Lot Coverage and an ~ 2 ft. relief from 17.56.050 of the Town of Big Flats Zoning Law, Accessory Setback; and

WHEREAS, the proposed action is a Type II action pursuant to SEQR 6 NYCRR Part 617; and

WHEREAS, on the basis of materials submitted by the applicant on and before September 22, 2009 this board finds criteria #1, BFZL 17.60.120-B, to fail, 4-0 based upon documentation from the Town of Big Flats Assessor; and

WHEREAS, on the basis of materials submitted by the applicant on and before September 22, 2009, this board finds criteria #2, BFZL 17.60.120-B, to pass, 4-0; and

WHEREAS, on the basis of materials submitted by the applicant on and before September 22, 2009, this board finds criteria #3, BFZL 17.60.120-B, to fail, 4-0; and

WHEREAS, on the basis of materials submitted by the applicant on and before September 22, 2009, this board finds criteria #4, BFZL 17.60.120-B, to pass, 4-0, and

WHEREAS, on the basis of materials submitted by the applicant on and before September 22, 2009, this board finds criteria #5, BFZL 17.60.120-B, to fail, 4-0; and

NOW THEREFORE BE IT RESOLVED, to grant approval of the Area Variance Request by Jim Stander, owner of tax parcel # 47.04-2-25, for relief from Section 17.16.020 of the Town of Big Flats Zoning Law, Maximum Lot Coverage and 17.56.050 of the Town of Big Flats Zoning Law, Accessory Setback, based on the review of the criteria in the BFZL.

Request Denied: **AYES:** None
 NAYS: Williams, Rowe, Clarke and Hanson
 ABSTAINED:

Dated: Tuesday, September 22, 2009

BIG FLATS, NEW YORK

By order of the Zoning Board of Appeals of the Town of Big Flats

Joe Rowe

Chairman, Zoning Board of Appeals

Board review of criteria:

1. Whether an undesirable change will be produced in the character of the neighborhood.
Rowe, Yes; Williams, Yes; Hanson, Yes; Clark, Yes
2. Whether the benefit sought by the applicant can be achieved by some other feasible method.
Rowe, No; Williams, No; Hanson, No; Clark, No
3. Whether the requested area variance is substantial.

Hanson asked Polzella to review the non-conforming lot requirements.

Polzella explained that a conforming lot, per code, is 35,000sq ft, which requires a setback of 25ft. The applicant has .71 acres without sewer and water, making it a non-conforming lot, which allows a 3ft setback. The variance request is for a further reduction of approximately 18 inches.

Rowe, Yes; Williams, Yes; Hanson, Yes; Clark, Yes.

4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood.
Rowe, No; Williams, No; Hanson, No; Clark, No.
5. Whether the alleged difficulty of compliance is self-created.
Rowe, Yes; Williams, Yes; Hanson, Yes; Clark, Yes

Discussion: Clark asked if the shed located too close to the fence could be moved.

Stander answered no, it is connected to the fence and would have to be torn down.

Rowe reiterated the findings that both buildings are currently in violation and the request is substantial. Typically we do not have letters from town officials reporting on specific applications.

Polzella said if approved, the Code Enforcement Officer would need to address the issue of building without a permit as well as the stability of the structure. If an adequate inspection could not be done, the structure may need to be disassembled. If denied, the applicant would have to remove the structures and no reconstruction would be allowed at this time.

Members Comments

Polzella stated that the preliminary rough draft of the zoning update is being reviewed with the consultant. The Planning Board meeting on October 6, 2009 will focus primarily on that draft. On October 14, 2009, the update will be presented to the Town

Board. An open house will be held at the Community Center on October 21, 2009, which will include several informational stations dedicated to different sections of the update.

Motion to adjourn at 8:03pm by Williams, seconded by Hanson, Discussion, None, Motion Carries 4-0.

Meeting adjourned at 8:04pm

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October 27, 2009

The Zoning Board of Appeals did not meet in October 2009, as there was no new business.

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November 23, 2009

The Zoning Board of Appeals did not meet in November 2009, as there was no new business.

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December 20, 2009

The Zoning Board of Appeals will not meet in December 2009, due to no new business.

Stephen J. Polzella
Director of Planning